

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
AND SUBSTANCE ABUSE SERVICES**

**Holiday Inn-North
2805 Highwoods Blvd., Raleigh, NC 27604**

Thursday, May 18, 2006

Attending:

Commission Members: Pender McElroy, Marvin Swartz, MD, Laura Coker, Clayton Cone, Dorothy Crawford, Ann Forbes, Mary Kelly, Judy Lewis, Emily Moore, Carl Shantzis, Ed.D., CSAPC, Fredrica Stell, Lois Batton, Pearl Finch, Mazie Fleetwood, Paul Gulley, MD, Buren Harrelson, George Jones, Martha Macon, Martha Martinat, Jerry Ratley, Anna Scheyett, William Sims, MD, Ellen Holliman, and Tom Ryba

Commission Members Excused: Floyd McCullouch, Connie Mele

Ex-Officio Committee Members: Joe Donovan, Janet Schanzenbach

DMH/DD/SAS Staff: Michael Moseley, Leza Wainwright, Steven Hairston, Denise Baker, Cindy Kornegay, Flo Stein, Chris Phillips, Buck Dawkins, Laura White, Gerald Peacock

Others: Richard Slipsky, Lisa Corbett, Louise Fisher

Handouts:

Mailed Packet:

May 18, 2006 Commission for MH/DD/SAS Agenda

Draft April 12, 2006 Advisory Committee Minutes

Draft April 13, 2006 Rules Committee Minutes

Proposed Amendment of Waiver of Licensure Rules 10A NCAC 27G .0813

Proposed Adoption of Firearms Rules 10A NCAC 28I .0402, Proposed Repeal of Firearms Rules 10A NCAC 28I .0402

Proposed Repeal of Secretary Rules 10A NCAC 29A, 10A NCAC 29B, and 10A NCAC 29D .0100

Proposed Repeal of Commission Rules 10A NCAC 29D .0200 and 10A NCAC 29D .0300

Summary of Proposed Guidelines Submitted by the North Carolina Retail Merchants Association and Approved by the Commission on November 14, 2005 for the Methamphetamine Lab Prevention Act of 2005

Report on New Federal Methamphetamine Law

Additional Handouts:

Resolution submitted by the Advisory Committee Chair concerning Workforce Development

Full Packet of New Training and Training Log Requirements for the Sale of Certain Pseudoephedrine Products in North Carolina

Single v. Uniform Portal of Entry

Call to Order:

Pender McElroy, Chairman, called the meeting to order at 9:35 a.m. Mr. McElroy welcomed all attendees and asked the Commission members, Division Staff and visitors to introduce themselves.

Mr. McElroy indicated that he had been approached by several Commission members who wished to open Commission meetings with a prayer of invocation. Citing constitutional implications of separation of church and state, Mr. McElroy questioned the propriety of this practice for the Commission. He acknowledged that other entities, including the U.S. Congress and the N.C. General Assembly, begin their respective sessions with prayer.

Commission members discussed the issue of prayer and considered several alternatives including verbal invocation, silent prayer, and a formal moment of silence. Ultimately, the issue was subjected to a vote by the Commission members.

Upon motion, second, and a majority vote of 13 to 5, the Commission voted to open its meetings with prayer.

The following members volunteered to pray at the beginning of Commission meetings: Emily Moore, Judy Lewis, Fredrica Stell, Buren Harrelson, and Pearl Finch. Mr. McElroy indicated that Dr. William Sims (who had not arrived at that point) will likely agree to lead in prayer as well. Mr. McElroy then opened the meeting with prayer.

Approval of Minutes

Anna Scheyett asked that the minutes of the February 15, 2006 meeting be changed as follows:

- Add an r to Christine Trottier's name, p. 1, section labeled Others
- Delete the word habilitation, p. 6, paragraph 4, line 2
- Replace Community Supports with Developmental Therapies, p. 6, paragraph 4, line 3
- Replace ICF/MR with CAP-MR/DD, p. 6, paragraph 4
- Delete paragraph 1, p. 7 in its entirety and replacing it with the following: "The Division has been in discussion with professional organizations regarding provisionally licensed staff. A provisionally licensed professional will not be able to directly bill Medicaid; however, a provisionally licensed individual will be able to function as a qualified professional while providing enhanced benefits receiving the training required by the licensing board."
- Modify paragraph 2, p. 7 to read "Anna Scheyett stated that several students informed her that non-profit organizations are not hiring provisionally licensed LCSWs (P-LCSWs) because they cannot directly bill to Medicaid."
- Add the following sentence to the end of paragraph 2, p. 7: "Anna Scheyett requested assistance from the Division in identifying the clinical functions with the new service definition."

Leza Wainwright requested the following change to the minutes:

- Delete the word Medicare, p. 6, paragraph 4, line 7

Upon motion, second, and unanimous vote, the Commission approved the minutes of the February 15, 2006 Commission meeting with the recommended changes.

Dorothy Crawford questioned the status of provisional licensure. Leza Wainwright reported that the deadline for provisionally licensed individuals has been extended through July 1, 2007; attached to that extension was a grid showing which components of all the new service definitions provisionally licensed folks were able deliver today.

Chairman's Report:

Mr. McElroy announced that Dr. Donald Stedman has resigned from the Commission. He stated that he and Dr. Swartz will ask Dr. Stedman to remain active on the Workforce Development workgroups undertaken by the Advisory Committee.

Mr. McElroy reviewed the list of Commission members whose terms will expire June 30, 2006:

Appointed by the Governor

- Connie Mele
- Dorothy Rose Crawford
- Laura Coker
- Mary Kelly
- Martha Martinat
- Mazie T. Fleetwood
- Paul Gulley
- William Sims

Appointed by the House of Representatives

- Ellen Holliman
- Marvin Swartz

Appointed by the Senate

- Tom Ryba

Each of these individuals is eligible for re-appointment to the Commission. Ms. Dorothy Crawford was recently reappointed. Denise Baker indicated that the appointing bodies have been informed of those whose tenure expires June 30, 2006. Mr. McElroy expressed hope that each member will be re-appointed and continue service on the Commission.

Mr. McElroy welcomed Mr. Michael Moseley, Director, DMH/DD/SAS, to the Commission meeting and thanked him for his attendance.

DMH/DD/SAS Director's Report:

Mr. Moseley identified the activity of the NC General Assembly as a pressing issue and provided a detailed description of legislative activity affecting the Division of Mental Health.

Reportedly, the Senate intends to complete its deliberations and vote on its budget no later than Memorial Day; the House of Representatives plans to complete its work no later than the end of June. Should this occur, the final budget should be drafted on or about July 3rd. Mr. Moseley discussed differences between the Governor's budget and the proposals from the Legislative Oversight Committee (LOC).

Mr. Moseley listed the following as among MH/DD/SA goals:

- Seek expansion request for information technology and furnishings for the new hospital being built in Butner
- Seek expansion request for increased staffing in an effort to increase the capacity of Alcohol and Drug Abuse Treatment facilities

Mr. Moseley identified the following LOC recommendations:

- Monies for Developmental Therapy as a result of the disallowance by the Centers for Medicare and Medicaid Services (CMS) of the continuation of Community Based Services (CBS)
 - Monies for Mental Health and Substance Abuse are expansion dollars which will permit additional people to be served
 - Monies for Developmental Disabilities only targets the replacement services for those previously receiving CBS whose services were disallowed by CMS
- Monies for a housing initiative and for a housing trust fund
- Recommendations regarding a hospital debt service

- Funding for Area Health Education Centers (AHECs) and rural health to help recruit psychiatrists
- Funding for consultants
 - To assist the DMH in taking a look at its capacity in a number of areas
 - To work with Local Management Entities (LMEs) in developing crisis services
 - To assist the DMH with the State Plan – moving away from the annual State Plan to the development of a strategic State Plan
- LME Strategic Assistance Team – experts to be dispatched to the LMEs to provide assistance with complex issues
- Recommendations for the Department to establish an ombudsman program regarding Advocacy and Customer Services issues – this would be in addition to that currently provided by the DMH

Mr. Moseley referenced the following provisions of the Governor's budget:

- Monies for the MH trust fund for expansion of community capacity
- Monies for the technology equipment for the new hospital
- Monies for staffing issues related to the ADATCs
- Initiative for healthy families
- Monies for child and family support teams
- Monies for Developmental Therapies (also included in the LOC recommendations)

Dr. Marvin Swartz commented that the National Association of State Mental Health Program Directors indicates that, in terms of mental health services, NC ranks 43rd out of the 50 states. He suggested that the Commission support the Governor's budget and the LOC recommendations.

Mr. Moseley then provided updates regarding transitioning through the elimination of CBS and Provider Endorsement issues. Specifically, Mr. Moseley indicated that, due to the elimination of CBS and its impact upon services for those with Developmental Disabilities (DD), the DMH sought an amendment to the state Medicaid plan to permit an increase in the number of slots in the CAP-MR/DD program. CMS approved 2000 additional slots and 2400 people, whose CBS was eliminated, have been entered into the CAP-MR/DD program. A second amendment requested 800 additional slots has been submitted.

More than 1300 providers have been endorsed to provide the services which became effective March 20th. Mr. Moseley cautioned, however, that staffing issues remain and this process is in a state of transition. The DMH has granted waivers to approximately 21 LMEs allowing them to provide services on a time-limited basis. Some of these waivers may be extended as provider capacity has not yet been realized.

Mr. Moseley entertained questions regarding the following issues:

- Whether the LOC supports reform as originally envisioned or whether it anticipates changes in the structure of reform efforts
- Consumer input at the LME level
- DMH plan for responding to disasters particularly in light of Provider Endorsement initiatives
- Divestiture of services in Wake County and the impact upon psychiatrists

Rules Committee Report

Anna Scheyett, Committee Co-Chair, provided the report from the Rules Committee. The Rules Committee considered the following rules during its April 13, 2006 meeting:

- Waiver of Licensure Rules (10A NCAC 27G .0813) – the purpose of the proposed rule amendment is to update information about the appeal process when there is a denial of a request to waive a licensure rule. This rule reflects contested case requirements in accordance with G.S. 150B. Therefore, the amendment would make the language of the rule consistent with the requirements of 150B. The Rules Committee unanimously approved sending the proposed amendment forward and recommends Commission approval for publication.
- Rules for Services for Eligible Assaultive and Violent Children and Adolescents, formerly called Willie M. (10A NCAC 29A), Thomas S. Services (10A NCAC 29B) and Carolina Alternatives (10A NCAC 29D .0100). Because these services no longer exist, repeal of the rules is recommended. These are Secretary rules and no action is required by the Commission.
- Designation of Area Mental Health, Mental Retardation and Substance Abuse Authorities and Catchment Areas (10A NCAC 29D .0300) and Single Portal of Entry and Exit Designation (10A NCAC 29D .0200) – repeal of these rules is necessary to update rules to reflect current practices. Mental health reform legislation repealed Commission rule-making authority for these rules. The Rules Committee unanimously approved sending the rules forward to the Commission with recommendation for repeal. However, the Rules Committee expressed concern that with single portal for DD there was a waiting list data that has been lost with uniform portal. Therefore, the Rules Committee recommended that the Commission consider writing a letter to the Secretary and the LOC expressing ~~our~~ concern regarding the loss of waiting list data previously captured by single portal; it also requested that a mechanism be incorporated into uniform portal to capture this data for all three disability populations.
- Firearms (10A NCAC 28I . The current rule was adopted in 1976 under rulemaking authority of the Commission. Since then, the authority for rulemaking for state facilities has been given to the Secretary. The need for a new rule addressing firearms and state facilities resulted from a tragic incident at Cherry Hospital where a patient was able to remove an officer's gun, shoot a hospital employee and kill himself. The Rules Committee unanimously approved sending the rule forward to the Commission with recommendation for repeal.

The Rules Committee also heard a presentation from Gerald Peacock on the new Federal Methamphetamine Law which compared the federal law to the NC Statute. Questions surfaced regarding the Commission's compliance with its responsibilities in the area of training under the NC Statute. The Committee requested that a representative from the Attorney General's Office attend the Commission meeting so there could be a more thorough discussion of the requirements of the legislation and the Commission's responsibilities.

Advisory Committee Report

Dr. Marvin Swartz, Committee Chair, presented the Advisory Committee's report of its April 12, 2006 meeting. The Advisory Committee considered two primary items: Workforce Development and the functioning of CFACs.

The Advisory Committee agreed to move forward with workforce development planning through three groups:

- Governance Committee – responsible for researching and defining system functions and policy clarity between the DMH, LMEs, providers, and stakeholders. This subcommittee will look at the overall issue of workforce training and how it can be organized at different levels throughout the state. This group was to be chaired by Don Stedman; his resignation is a significant loss, in part, because his role was to “shine the light” on these issues and attract the attention of the university system, community colleges, and other stakeholders in education.
- Data and Information Workgroup – responsible for providing analysis of labor market information and statistical data related to the present and future workforce of NC. Clayton Cone agreed to chair this subcommittee.
- Professional Staff Workforce Development – this subcommittee will consist of the entire Advisory Committee and will examine all aspects of the provision of care across disability categories. This group will be chaired by Marvin Swartz and Steven Hairston.

The Advisory Committee considered the applicable timeline for this taskforce. Don Stedman opined that it would take approximately 1½ years, through the fall of 2007, to develop the plan. The Committee agreed to distinguish short and long-term goals in addressing workforce development issues. A short-term issue is funding for workforce development. The Committee asked Marvin Swartz to draft the following resolution for consideration by the Commission.

On behalf of the Committee, Dr. Swartz presented the following resolution for consideration by the Commission:

The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services applauds the leadership provided by the Legislative Oversight Committee (LOC) in addressing barriers to implementation of mental health reform efforts in North Carolina.

The Commission is particularly concerned about funding shortfalls that have hampered the development of community-based services for MH/DD/SAS consumers and commend the LOC for its proposed new funding initiatives.

As the LOC is aware, one area requiring urgent attention is workforce development. At a time when there is a troubling loss of workforce capacity and a growing need to re-train the existing workforce, there is unclear accountability for workforce training and no designated funding for workforce training efforts. The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services has recently initiated a taskforce to assist in the development of a strategic plan for workforce development. It is clear from the outset that substantial funding earmarked for workforce training is needed. We ask the LOC to identify funds specifically designated for workforce training in the current legislative session.

The Advisory Committee considered issues related to CFACs. The CFACs are a very promising development in NC and have tremendous potential for assisting with MH reform. However, there is a lack of clarity about the role of CFACs at the local level in how they are appointed, their authority, their relationship to the board of the LME, and their reporting structure. There also is inconsistency in the direction provided regarding how CFACs should be convened, operated, and what their future role should be. The Advisory Committee recommended that vigilance be maintained and that the Commission consider rule-making regarding CFACs in the future. The Committee unanimously agreed that greater clarity is needed about CFACs and their operation.

The Commission considered to whom the Resolution should be addressed and whether it should include an attached list of Commission members.

Michael Moseley observed that the LOC has adopted its legislative activity and queried whether the LOC would be the appropriate recipient of the resolution. Discussion centered on sending the resolution to the bill sponsors – Representative Insko and Senator Nesbitt.

Mr. McElroy proposed minor modifications to the resolution including substituting the “General Assembly” in the last sentence in lieu of the “LOC”. Michael Moseley observed that the Appropriations Committee might be an appropriate recipient of the resolution.

Upon motion, second, and unanimous vote, the Commission adopted the Resolution for the Designation of Workforce Development Funding submitted by the Advisory Committee.

Discussion then centered on the Commission’s authority to promulgate rule regarding CFACs and bills related to the codification of the CFACs. Mr. McElroy requested copies of the bills related to CFACs to determine whether these bills address Commission concerns regarding CFACs.

Proposed Amendment of 10A NCAC 27G .0813 Waiver of Licensure Rules:

Steven Hairston presented the proposed amendment for Waiver of Licensure rules. The proposed amendment is to update information concerning the appeals process for denial of request to waive a licensure rule and to reflect the contested case requirements in accordance with G.S. 150B. This amendment changes the language to bring the rules into compliance with the General Statute.

Upon approval of the recommended changes the rule sections will read as follows:

- (a)(5) documentation of governing body approval when requests are from an area authority or county program and contract agencies of an area authority or county program, or documentation of governing body approval when requests are from private facilities not contracting with an area authority or county program.
- (c)(5) documentation of governing body approval when requests are from an area authority or county program and contract agencies of area/county programs, or documentation of governing body approval when requests are from private facilities not contracting with an area authority or county program
- (f) The decision of the Director of DFS regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

The Rules Committee recommended that the Commission approve these amendments for publication.

Upon motion, second, and unanimous vote, the Commission approved the foregoing amendments of 10A NCAC 27G .0813 Waiver of Licensure Rules to be published for public comment.

Proposed Adoption of Rule 10A NCAC 281 .0402 and Proposed Repeal of Rule 10A NCAC 281 .0401: Firearms Rules:

Laura White, State Operated Services, presented the proposed adoption Rule 10A NCAC 281 .0402 and proposed repeal of Rule 10A NCAC 281 .0401 Firearms Rules. Ms. White briefed the Commission regarding the role of State Operated Services. Ms. White described State

Operated Services as a section of the DMH/DD/SAS which oversees and works with state facilities including AHECs, state hospitals, developmental centers, and child residential schools. Ms. White is the Team Leader for the Hospitals Team. Michael Moseley clarified that these rules would apply to facilities administered by the DMH/DD/SAS.

Ms. White described ongoing discussions regarding modification and/or repeal of the rule and confirmed that the tragic shooting at Cherry Hospital made it more imperative that the issue of firearms in state operated facilities be given further consideration.

Ms. White indicated that what has been proposed is that each facility should develop its own policy on firearms and where firearms should be permitted based upon the type of facility, its location, and its specific needs. The policy should specify where firearms would be permitted and prohibit firearms in any patient/resident care areas.

Patient/resident care areas would include any area where treatment or rehabilitation is provided. Ms. White emphasized that efforts were made to consider an approach which would keep patients/residents safe while allowing police officers to fulfill their job obligations on campus. These rules would not apply to crisis centers operating as community programs.

New Rule 10A NCAC 281 .0402 is proposed for adoption as follows:

- (a) Each state facility shall develop and implement written policies concerning firearms.
- (b) The written policies shall include:
 - (1) a provision stating that only a law enforcement official may bring a firearm onto the grounds of the facility;
 - (2) a provision setting forth the areas of the facility where firearms are prohibited. At a minimum, each facility's policy shall prohibit firearms from any patient or resident care area unless a law enforcement official determines it is necessary to ensure client or staff safety; and
 - (3) a provision stating that prior to entering an area of the facility where firearms are prohibited, a law enforcement official shall:
 - (A) secure his or her firearm in his or her locked motor vehicle or;
 - (B) deposit his or her firearm in a secured site as designated by the facility.

The authority for this rule is G.S. 122C-112.1, Powers and Duties of the Secretary. The proposed rule language was presented to the Commission for review and comment. No Commission action was necessary.

Rule 10A NCAC 281 .0401 Firearms reading "No firearms shall be brought into the buildings of any institution of the Division. Law officers shall either leave firearms in their locked motor vehicle or deposit their firearms with responsible staff personnel of the institution" is proposed for repeal.

Cindy Kornegay indicated that the current firearms rule needs to be officially repealed by the Commission.

Upon motion, second, and unanimous vote, the Commission approved the proposed repeal of Rule 10A NCAC 281 .0401.

Proposed Repeal of 10A NCAC 29A: Services for Eligible Assaultive and Violent Children and Adolescents (Willie M.), 10A NCAC 29B: Thomas S. Services, and 10A NCAC 29D .0100: Carolina Alternatives:

Cindy Kornegay presented the proposed repeal of these rules. Ms. Kornegay indicated that these are Secretary's rules. Ms. Kornegay indicated that the Willie M. and Thomas S. rules pertained to lawsuits that have since been settled. The Carolina Alternatives waiver no longer

exists. The proposed repeals are necessary to reflect current services. The proposed rule language was presented to the Commission for review and comment. No Commission action was necessary.

Proposed Repeal of 10A NCAC 29D .0200 Single Portal of Entry and Exit Designation and 10A NCAC 29D .0300 Designation of Area Mental Health, Mental Retardation and Substance Abuse Authorities Catchment Areas:

Cindy Kornegay presented the information on the proposed repeal of these rules. Ms. Kornegay indicated that the Commission's statutory rulemaking authority for these subject areas was repealed with MH reform legislation, Session Law 2001-437, and the proposed repeal of these rules is to make them consistent with current practices. Single portal was replaced in the MH reform legislation with uniform portal and catchment areas were removed from rulemaking and are now addressed through the Secretary's consolidation plan.

Flo Stein, Chief, Community Policy Management, DMH/DD/SAS, presented information addressing the Commission member's concerns regarding the difference between single and uniform portal of entry and the effectiveness of the uniform portal system. Ms. Stein indicated that the State Plan contained a requirement to develop implementation strategies for uniform portal of entry. Uniform portal is defined as a system which establishes a standardized group of processes and procedures to ensure that people throughout the state enter and leave the publicly funded service system in the same way. This system includes standardized processes as well as standardized forms. Ms. Stein described uniform portal as a more consumer centered policy than the single portal of entry. The screening at the designated portal of entry can be conducted by a LME, a designated provider, or a designated agency of the LME. It is an LME responsibility to know which clients reside in its catchment area and what type of services these individuals might need. Ms. Stein's presentation included a handout of the points addressed.

Michael Moseley indicated that previous meetings with Rep. Insko and others have included discussions of utilization review and screening, triage, and referral. Other discussions need to address other LME functions and whether the expectations of those functions are clear. Mr. Moseley suggested that an opportunity exists to evaluate the cost model to determine whether all parties understand what the functions of the LME should be. Those functions include:

- Care coordination
- Advocacy and customer services
- Provider relations
- Quality management

There was no indication that this list was intended to be exhaustive. Mr. Moseley opined that LMEs could perhaps be strengthened by strengthening and clarifying expectations of the functions LMEs should perform.

Ms. Stein concluded the presentation by offering to provide updates to the Commission as the standardization process unfolds.

Upon motion, second and unanimous vote, the Commission approved the proposed repeal of 10A NCAC 29D .0200 Single Portal of Entry and Exit Designation and 10A NCAC 29D .0300 Designation of Area Mental Health, Mental Retardation and Substance Abuse Authorities Catchment Areas rules.

Report on the New Federal Methamphetamine Law

Gerald Peacock, Justice Systems Innovation Team, presented a report on the New Federal Methamphetamine Law.

This report provided distinctions and similarities between the North Carolina Statute and the Federal Law. This included a comparison of the following:

- Products regulated
- Storage
- Transaction limits
- Log requirements
- Training requirements

Richard Slipsky of the Attorney General's office indicated that the intent of the legislature in including the words "behind a pharmacy counter" in the statute was to restrict the sale of these products to a pharmacy. Mr. Slipsky suggested that the SBI should be notified when non-pharmacies are selling these products. Jerry Ratley indicated that a few arrests have been made regarding noncompliance with the statute but closer inspections reveal that the non-pharmacies investigated are selling products not restricted by the statute.

Gerald Peacock reported, and Richard Slipsky confirmed, that agencies must comply with the stricter of the two laws (NC / Federal). Mr. Slipsky indicated that the NC statute is stricter in some places than the Federal law. He reported that the subject matter would determine which law one must adhere to given that.

Commission members expressed concern for retailers who must understand and comply with laws which are inconsistent in their requirements. It was suggested that Mr. Peacock make contact with the North Carolina Medical Society and recommend that they in turn contact the AMA such that this issue could be addressed on a federal level.

The Commission discussed its role in the development of a training curriculum under the NC statute. Anna Scheyett and Richard Slipsky discussed the possibility of the Commission reviewing the federal training curriculum, once it's developed, and adopting the federal curriculum as its own. This might help eliminate confusion regarding which is more stringent and ensure uniformity of procedures for training.

Mr. McElroy questioned the possibility of technical corrections to the statute. Richard Slipsky reported having discussed this with Jeff McLeod, Attorney General's Office; consideration has been given to the possibility of a technical amendment.

Mr. McElroy informed Mr. Slipsky that on behalf of the Commission he would formally request from the Attorney General an opinion on the obligations of the Commission for training programs under the recent state statute.

Public Comment

Mr. McElroy asked if there were any members of the public who wished to make comments to the Commission. There were none.

New Business

On behalf of the Commission Mr. McElroy congratulated Tom Ryba for having been honored in the Triangle Business Journal.

There being no further business the meeting was adjourned at 12:50pm.

10A NCAC 27G .0813 is proposed for amendment as follows:

10A NCAC 27G .0813 WAIVER OF LICENSURE RULES

(a) The Director of DFS may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on, but not limited to, the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients;
- (4) the existence of good cause; and
- (5) documentation of ~~area-board~~ governing body approval when requests are from ~~area programs~~ an area authority or county program and contract agencies of ~~area programs~~ an area authority or county program, or documentation of governing body approval when requests are from private facilities not contracting with ~~area programs~~ an area authority or county program.

(b) Requests for waivers shall be sent to the Director, Division of Facility Services, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
 - (A) reason for, and the nature and extent of, the request; and
 - (B) that the health, safety or welfare of clients will not be threatened.
- (5) documentation of ~~area-board~~ governing body approval when requests are from ~~area programs~~ an area authority or county program and contract agencies of ~~area programs~~ area/county programs, or documentation of governing ~~board body~~ approval when requests are from private facilities not contracting with ~~area programs~~ an area authority or county program.

(d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

(f) The decision of the Director of DFS regarding a waiver request may be appealed to the ~~Commission~~ Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. ~~10A NCAC 26A .0200~~. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

(g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

History Note: Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147;

Eff. May 1, ~~1996~~ 1996;

Amended Eff:

10A NCAC 28I .0401 is proposed for repeal as follows:

10A NCAC 28I .0401 FIREARMS

~~No firearms shall be brought into the buildings of any institution of the Division. Law officers shall either leave firearms in their locked motor vehicle or deposit their firearms with responsible staff personnel of the institution.~~

History Note: Authority G.S. 143B-147

10A NCAC 28I .0402 is proposed for adoption as follows:

10A NCAC 28I .0402 FIREARMS

- (a) Firearms shall not be brought into patient or resident care areas of the buildings of any institution of the Division, unless required to ensure staff and client safety.
- (b) Law officers shall either leave firearms in their locked motor vehicle or deposit their firearms in a secured site provided by the institution.

History Note: Authority G.S. 122C-112.1

CHAPTER 29 — MENTAL HEALTH: OTHER RULES
SUBCHAPTER 29A — SERVICES FOR ELIGIBLE ASSAULTIVE AND
VIOLENT CHILDREN AND ADOLESCENTS
SECTION .0100 — SERVICES FOR ELIGIBLE ASSAULTIVE AND
VIOLENT CHILDREN AND ADOLESCENTS

~~10A NCAC 29A .0101 SCOPE~~

- ~~(a) The purpose of Rules .0101 through .0106 of this Section is to establish the Division's policy granting priority admission for children certified as Willie M. class members to appropriate programs in facilities operated by the Division as required by the Appropriations Bill of the 1981 Session Laws, Chapter 859.~~
- ~~(b) The facilities governed by this policy are the regional psychiatric hospitals, the regional mental retardation centers, Whitaker School and Wright School.~~

~~*History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;*~~
~~*Eff. September 30, 1981;*~~
~~*Amended Eff. April 1, 1990.*~~

~~10A NCAC 29A .0102 DEFINITIONS~~

~~For the purposes of Rules .0104 through .0109 of this Section, the following terms shall have the meanings indicated:~~

- ~~(1) "Willie M. class members" means children, under the age of 18, who are emotionally, neurologically or mentally handicapped with accompanying violent or assaultive behavior and who have been determined by the U.S. District Court, Western District of North Carolina to be class members in the case of Willie M., et. al. vs. Hunt, et. al., Civil Action No. CC 79-0294.~~
- ~~(2) "Funded zone" means one of the zones funded for Willie M. services, i.e., West Zone 6 includes Smoky Mountain Area Program; South Central Zone 1 includes Wake, Johnston, and Lee Harnett Area Programs; North Central Zone 2 includes Vance Granville Franklin Warren, Durham, and Orange Person Chatham Area Programs.~~
- ~~(3) "Unfunded zone" means the other area programs not receiving funds for Willie M. services.~~
- ~~(4) "Certification Committee" means the Committee established by the Department of Human Resources to review diagnostic information of potential class members to determine whether or not each potential class member meets the criteria for class membership.~~
- ~~(5) "Regional facility" means one of the four psychiatric hospitals or the four mental retardation centers.~~
- ~~(6) "State facility" means Whitaker School, Wright School in Durham, and the Children's Psychiatric Unit at John Umstead Hospital.~~

- (7) ~~"Primary Portal of Entry" means the process of entering the mental health, mental retardation and substance abuse system through the area program.~~

~~History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;~~

~~Eff. September 30, 1981;~~

~~Amended Eff. April 1, 1990.~~

~~10A NCAC 29A .0103 CRITERIA FOR ADMISSION~~

~~(a) To be eligible for priority admission established in Rules .0104 through .0109 of this Section, the child shall be a Willie M. class member as defined in Rule .0105 (1) of this Section.~~

~~(b) The child shall also meet the admission criteria of the facility where consideration of admission is being made in order to assure that available services are appropriate for the child. Cross regional admissions may be made upon approval of the Division Director.~~

~~History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;~~

~~Eff. September 30, 1981;~~

~~Amended Eff. April 1, 1990.~~

~~10A NCAC 29A .0104 APPLICATION FOR ADMISSION~~

~~Application for services in a regional or state facility shall be made by using the area program as the primary portal of entry.~~

~~History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;~~

~~Eff. September 30, 1981.~~

~~10A NCAC 29A .0105 PRIORITY FOR ADMISSION~~

~~Regional and state facilities shall use the following priority categories when considering Willie M. children for admission to appropriate programs in the facility;~~

~~(1) First priority shall be given to Willie M. class members from non-funded zones.~~

~~(2) Second priority shall be given to Willie M. class members from funded zones with programs not yet operational.~~

~~(3) Third priority shall be given to Willie M. class members from funded zones which have appropriate programs operational but have no vacancies.~~

~~History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;~~

~~Eff. September 30, 1981.~~

~~10A NCAC 29A .0106 MAXIMUM NUMBER OF CLASS MEMBERS TO BE SERVED~~

~~(a) The maximum number of Willie M. class members who can be reasonably served in appropriate programs of the facilities operated by the Division shall be as follows:~~

<u>Facility</u>	<u>Program</u>	<u>Max. No.</u>
Broughton Hospital	Children's Admissions Unit	1
Broughton Hospital	Long Term Unit	3
		—4
Cherry Hospital	Children's Admissions Unit	2
Cherry Hospital	Long Term Unit	3
		—5
Dorothea Dix Hospital	Children's Admissions Unit	6
Dorothea Dix Hospital	Long Term Unit	4
		—10
John Umstead Hospital	Intensive Diagnostic Treatment (Admissions) Unit	4
John Umstead Hospital	Adolescent Long Term Unit	4
John Umstead Hospital	Children's Psychiatric Unit	2
		—10
Wright School		3
Whitaker School		18
Caswell Center	Unit for Mentally Retarded Children with Behavioral Disorders	2
Murdoch Center	Special Behavioral Management Unit	3
O'Berry Center		0

These figures are based on the adequacy of staffing patterns and other resources, such as facility space requirements, to appropriately and effectively treat Willie M. clients, who by definition are violent or assaultive.

(b) When a program in a state or regional facility is serving the maximum number of Willie M. class members specified in (a) of this Rule, that program shall be considered full and no longer appropriate to serve additional class members until a class member receiving service in the program is discharged or until the program is expanded. However, in this type of situation, the Division, acting in conjunction with the facility staff and the responsible area program staff, will provide or locate reasonably appropriate services until the child can be appropriately served at the facility or elsewhere.

History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859;

Eff. September 30, 1981;

Amended Eff. April 1, 1990.

10A NCAC 29A .0107 FUNDS FOR ASSAULTIVE CHILDREN

(a) In furtherance of the Appropriation Bill of the 1981 Session Laws, Chapter 859 and Chapter 1032, the Division shall administer funds to provide treatment to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior and who have been certified as Willie M. class members in the case of Willie M., et. al. vs. Hunt et. al. The focus of these programs may include, but are not limited to, residential treatment programs and independent living arrangements.

(b) Programs operated by an area program or a private program contracted by the area program may spend funds for assaultive children for the following:

- (1) staffing;
- (2) travel;
- (3) supplies;
- (4) utilities;
- (5) administrative and program equipment;
- (6) administrative cost which can be clearly documented through direct assignment or a Division approved cost allocation method;
- (7) transportation of clients;
- (8) other program costs as approved by the Division; and
- (9) purchase, construction, alteration, improvement, or repair of a facility owned by the area program or county or non profit contract agency according to the provisions of 10A NCAC 27A .0204.

(c) Funds provided by the Division to support the services provided to a Willie M. program shall be discontinued if the program fails to serve any Willie M. clients.

(d) Funds for assaultive children shall not be used in specific programs to serve children who are not Willie M. class members if any class member who is in that zone and who is appropriate for the specific program being funded remains unserved. The zones within the state shall be determined by the Division. Funds shall not be expended for any program that does not serve Willie M. class members. Funds shall not be used to start or operate a service in its entirety which serves a disproportionately small number of Willie M. clients. The Division shall negotiate the minimum number of Willie M. children who shall be served in each program and shall specify that number in the grant award notice.

(e) Funds for assaultive children may be used to support the cost of treatment for members of the Willie M. class who attain the age of eighteen if the member continues to be in need of such treatment and will benefit from continued placement or involvement in the program. However, such support shall not be in excess of six months following the class member's 18th birthday or the end of the fiscal year in which the class member reaches 18 years of age, whichever comes later.

(f) The annual budget for programs serving Willie M. clients shall be submitted in accordance with the Willie M. Unit Cost Reimbursement Plan for the fiscal year.

~~(g) The annual budget for programs serving Willie M. clients shall be budgeted into separate cost centers. Such cost centers shall include all sources of revenue which support the direct cost of services for Willie M. clients. Funds expended for services to Willie M. clients such as outpatient visits, emergency services, or case management services may be budgeted within the area program cost center which provides that service if the area program maintains sufficient statistical data to indicate the service provided to the Willie M. client and the cost of the service.~~

~~(h) The area program shall provide financial and statistical reports regarding funds for assaultive children to the Division according to instructions of the Division.~~

~~(i) The limitation on the number of inpatient days as contained in 10A NCAC 27A .0221(a)(1)(C); USE OF DIVISION FUNDS FOR INPATIENT SERVICES; shall not apply to Funds for Assaultive Children.~~

~~History Note: Authority G.S. 122C 147; 122C 150;~~

~~Eff. January 1, 1982;~~

~~Amended Eff. February 1, 1996; April 1, 1990; October 1, 1983; November 1, 1982.~~

10A NCAC 29A .0108 SCOPE

~~(a) The rules in this Section implement G.S. 122C 112(a)(14) and 122C 194 through 122C 200 by establishing requirements for:~~

- ~~(1) — designating Eligible Assaultive and Violent Children (EAVC);~~
- ~~(2) — ensuring needs assessment, planning and provision of services to EAVC clients; and~~
- ~~(3) — administrative review of decisions related to EAVC services or eligibility~~

~~(b) These Rules shall govern all disputes related to EAVC services and eligibility unless those disputes are governed by G.S. 115C 116.~~

~~(c) Each EAVC client shall be provided services that include:~~

- ~~(1) — habilitation, including medical treatment, education, training and care, suited to his essential needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Such habilitation shall create a reasonable expectation of progress toward the goal of independent community living.~~
- ~~(2) — the least restrictive, i.e., most normal, living conditions appropriate for that person. Among the factors to be considered in determining the least restrictive living conditions appropriate for the individual are the need to minimize institutionalization and the need to minimize the possibility of harm to the individual and society.~~
- ~~(3) — goals, as appropriate to the individual, that enable the client to move from:
 - ~~(A) — Living and programming segregated from the community to living and programming integrated with the community;~~
 - ~~(B) — More structured living to less structured living;~~
 - ~~(C) — Group residences to individual residences; and~~
 - ~~(D) — Dependent living to independent living.~~~~
- ~~(4) — such placements and services as are actually needed as determined by a Treatment/Habilitation Plan rather than such placements and services as are currently available. If placements and services actually needed are not available, they shall be developed and implemented within a reasonable period. Prior to development and implementation of needed placements and services, the person shall receive placement and services which meet as nearly as possible the person's actual needs.~~

~~History Note: Authority G.S. 122C 3; 122C 112; 122C 194; 122C 195; 122C 196; 122C 197; 122C 198; 122C 199; 122C 200;~~

~~Eff. March 1, 1997.~~

10A NCAC 29A .0109 DEFINITIONS

~~(a) This Rule contains definitions that apply to all of the rules in this Section. Definitions contained in G.S. 122C 3 shall also apply.~~

~~(b) Unless otherwise indicated, the following terms shall have the meanings specified:~~

- (1) "Advocate or Representative" means an attorney or guardian ad litem pursuant to G.S. 7A for an EAVC applicant or client. In the event that an EAVC applicant or client has a representative other than an attorney retained by the client or parent/guardian or GAL appointed under G.S. 7A, the Department or Division shall retain the right to challenge whether a representative is in fact acting on behalf of the child and at the child's request.
- (2) ~~"Appropriate Services" means services which include a good faith and professionally competent effort to enable the child to overcome or cope with the problems that led to eligibility and to prepare the child for the reasonably expected life and problems to be encountered in adulthood. The provision of appropriate services is judged against the essential needs of the individual, which are based on the capabilities and potential of the individual. The eligible client is not guaranteed a "cure" or a "positive outcome," but rather a good faith effort to accomplish the goals set forth herein.~~
- (3) ~~"Contract agency" means an agency or entity under contract with the Division, acting in the role of an area program for purposes of serving EAVC in a particular geographic area.~~
- (4) ~~"Division" means the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).~~
- (5) ~~"Director" means the Director of the Division of DMH/DD/SAS.~~
- (6) ~~"EAVC applicant or Willie M. nominee" means any child under the age of 18 who has applied for or been nominated for determination of eligibility as a Willie M. class member or an EAVC client.~~
- (7) ~~"Eligible assaultive and violent child (EAVC)" means a child under the age of 18 who has been determined by the Department of Human Resources to meet the eligibility criteria as defined in these Rules and is eligible to receive the services needed.~~
- (8) ~~"Essential needs" means behaviors, areas of functioning or critical problems which must be addressed in order for the child to overcome or cope with the problems that led to EAVC eligibility, to prepare for adulthood and to acquire and maintain life skills consistent with the individual's potential and capabilities.~~
- (9) ~~"Lead agency" means the Division at the State level and the area mental health, developmental disabilities and substance abuse program or contract agency at the local level.~~
- (10) ~~"Legally responsible person" means the term as defined in G.S. 122C 3(20).~~
- (11) ~~"Outcome domain areas" means areas, as indicated for each EAVC client, within which a client's essential needs shall be defined. The areas shall include social, behavior, education, vocation, housing/residential, and health (including mental health).~~
- (12) ~~"Treatment/habilitation plan (T/HP)" means a written plan which is developed by the group of individuals (the team) knowledgeable about and involved with addressing the child's essential needs. The plan contains a written statement of the child's essential needs in areas or domains, of life (as defined in this Section), and the supports and interventions which are required in order to address the child's essential needs (as defined in this Section). Mandatory members of the T/HP team include the child, parent or guardian, case manager and local school system representative. Clinical input concerning the child's essential needs for use in developing, implementing and reviewing the T/HP shall be provided to the team by clinicians with expertise and experience related to serving children with emotional, mental or neurological handicapping conditions accompanied by behavior characterized as assaultive or violent.~~
- (13) ~~"Willie M. Class Member" means a child under the age of 18 who has been or is determined by the Department of Human Resources to meet the criteria for inclusion as a member of the plaintiff class in the Willie M., et al. v. James B. Hunt, Jr., et al. lawsuit (United States District Court for the Western District of North Carolina C C79CV294-MU). All Willie M. class members, otherwise eligible for services, are Eligible Assaultive and Violent Children, according to the rules herein.~~

- (14) ~~"Youth Behavioral Services Client (YBSC)" means, for the purposes of these Rules, a Willie M. class member and an EAVC.~~

~~History Note: Authority G.S. 122C-3; 122C-112;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0202 Eff. February 7, 1997.~~

10A NCAC 29A .0110 GENERAL PROVISIONS

(a) ~~The Director shall have lead responsibility in carrying out the implementation of these Rules and services provided pursuant to these Rules.~~

(b) ~~Designation as a YBSC minor is voluntary and shall occur only with the consent of the legally responsible person.~~

(c) ~~All certified members of the Willie M. class, eligible for services, shall be designated Youth Behavioral Services. Clients unless consent is withdrawn by the legally responsible person.~~

(d) ~~If a legally responsible person or an emancipated minor refuses services after the minor has been determined eligible as a YBSC, the area program or contract agency shall make periodic contacts with the legally responsible person or the emancipated minor to encourage consent for receipt of services.~~

(e) ~~The area program or contract agency shall maintain a record of its efforts to obtain consent. Such efforts shall include, but not be limited to phone calls, registered letters, home visits, contact with the family through individuals or agencies having a relationship with the minor and legally responsible person.~~

(f) ~~Where services are refused, the agencies shall report such refusal to the local Department of Social Services if it constitutes neglect of the minor's medical needs.~~

(g) ~~Refusal of consent for eligibility determination or for services shall cause an applicant or client to be placed in "inactive" status until such time as consent is obtained, or until the child is 18 years of age.~~

(h) ~~The legally responsible person and the area program or contract agency shall notify the Division of the occurrence of any circumstance which effects the eligibility of a YBSC or applicant to receive services. The Division shall be notified if:~~

(1) ~~the legally responsible person or emancipated minor withdraws consent for determination of eligibility or refuses services;~~

(2) ~~the client is admitted to an adult corrections facility operated by the North Carolina Department of Corrections;~~

(3) ~~the legally responsible person's State of residence changes; or~~

(4) ~~the client dies.~~

(i) ~~A child under the age of 18 who is an applicant for eligibility as a YBSC or who has been determined by the Department of Human Resources to meet the eligibility criteria for being a Willie M. class member or a YBSC is ineligible for services if any one of the following circumstances exists:~~

(1) ~~The child's legally responsible person is not a legal resident of North Carolina; or~~

(2) ~~The child has been confined under a criminal sentence in a facility operated by the North Carolina Department of Corrections.~~

~~If either of the circumstances in this Paragraph changes before the child is 18 years of age, the child shall again be eligible for services until age 18, as set forth in these Rules.~~

(j) ~~The death of a Willie M. class member or YBSC ends the minor's eligibility for services.~~

(k) ~~Fees for services provided pursuant to these Rules, with the exception of education services, shall be charged and collected consistent with the provisions of G.S. 122C-146.~~

~~History Note: Authority G.S. 122C-112; 122C-146;~~

~~Eff. March 1, 1997.~~

10A NCAC 29A .0111 ELIGIBILITY CRITERIA

~~In order to be designated a Youth Behavioral Services Client, a minor shall have an application filed in accordance with these Rules and:~~

(1) ~~suffer from emotional, mental or neurological handicaps as set forth in Rule .0112 of this Section;~~

- (2) ~~the minor's handicap shall be accompanied by behavior that is characterized as violent or assaultive, as defined in Rule .0113 of this Section;~~
- (3) ~~be or have been involuntarily institutionalized or otherwise placed in residential programs, including:~~
 - (a) ~~being mentally ill as defined by G.S. 122C 3(21) and admitted for evaluation or treatment to a treatment facility under G.S. 122C, Article 5 or being presented for admission and denied due to their behaviors or handicapping conditions;~~
 - (b) ~~referral to an area mental health, developmental disability and substance abuse program pursuant to G.S. 7A 647(3) for whom residential treatment or placement is recommended;~~
 - (c) ~~placement in a residential program as a condition of probation pursuant to G.S. 7A 649(8);~~
 - (d) ~~being ordered to a professional residential treatment program pursuant to G.S. 7A 649(6); or~~
 - (e) ~~commitment to the Division of Youth Services pursuant to G.S. 7A 649(10); and~~
- (4) ~~is a minor for whom the State has not provided appropriate treatment and educational programs as defined in Rule .0114 of this Section.~~

History Note: Authority G.S. 7A 647(3); 7A 649(1), (6), (10); 122C 3; 122C 112; 122C, Article 5; Eff. February 1, 1997;

Transferred and Recodified from 10 NCAC 18W .0204 Eff. February 7, 1997.

10A NCAC 29A .0112 EMOTIONAL, MENTAL OR NEUROLOGICAL HANDICAP DEFINED

To meet the requirement of suffering from emotional, mental or neurological handicaps, a minor shall:

- (1) ~~have one or more conditions so diagnosed according to International Classification of Diseases 9, American Association of Mental Deficiency, or Diagnostic and Statistical Manual of Mental Disorders IV systems of categorization (exceptions to this criterion shall include those disorders in the DSM-IV, published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety five cents (\$39.95) for the soft cover edition and fifty four dollars and ninety five cents (\$54.95) for the hard cover edition. Incorporation by reference of DSM-IV includes subsequent editions and amendments, to which no logical or reasonable connection can be made between that disorder and accompanying assaultive or violent behavior; e.g., nicotine related disorders. In addition, V codes, with no accompanying Axis I-III diagnoses, do not constitute an emotional, mental or neurological handicap. Such exceptions would apply only when there is no other emotional, mental or neurological handicap); or~~
- (2) ~~meet the criteria for handicapping conditions contained in G.S. 115C 108 and 115C 109;~~
~~or~~
- (3) ~~meet the statutory definition of mental illness for a minor in G.S. 122C 3.~~

History Note: Authority G.S. 122C 3; 122C 112; 122C 194; Eff. March 1, 1997;

Transferred and Recodified from 10 NCAC 18W .0205 Eff. February 7, 1997.

10A NCAC 29A .0113 VIOLENT OR ASSAULTIVE BEHAVIOR DEFINED

(a) To meet the criterion of violent or assaultive behavior, there shall be evidence in the minor's recent history (within the 12 months prior to the application or request for re review of eligibility) or current functioning of one or more of the following:

- (1) ~~physically attacks, with or without weapons against other persons or animals, or physical attacks resulting in property damage;~~
- (2) ~~physically self injurious behavior or serious suicidal attempts;~~
- (3) ~~threatened attacks with a deadly weapon;~~
- (4) ~~firesetting; or~~
- (5) ~~predatory sexual behaviors.~~

~~(b) In addition, the behaviors shall meet two or more of the following tests:~~

- ~~(1) the attack shall be sufficiently severe that substantial harm to persons did result or could result without intervention;~~
- ~~(2) the behavior shall have occurred with sufficient frequency to be considered a pattern of response (more than three times over a period of six months);~~
- ~~(3) the behavior is extreme or out of proportion to the provocation, if any, or is not an age-appropriate reaction;~~
- ~~(4) the behavior was sufficiently disruptive to lead to extrusion from or refusal for admittance to school, job, recreational setting, or treatment program;~~
- ~~(5) the behavior resulted in severe measures of control, e.g., seclusion, restraints, or chemical controls; or~~
- ~~(6) the behavior resulted in incarceration or institutionalization with the restrictive environment then "controlling" the behavior.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W.0206 Eff. February 7, 1997;~~

~~Temporary Amendment Eff. July 8, 1997;~~

~~Temporary Amendment Expired March 28, 1998.~~

~~10A NCAC 29A .0114 DETERMINATION THAT STATE HAS NOT PROVIDED APPROPRIATE TREATMENT~~

~~(a) To meet the criterion that the State has not provided appropriate treatment, the application shall show evidence of one or more of the following conditions, in addition to meeting the other criteria outlined in Rule .0111 of this Section:~~

- ~~(1) The minor has a diagnosis and a prescribed need for treatment that has not been implemented; or the current treatment or education services are not based on assessments which reflect the child's essential needs.~~
- ~~(2) The minor has an Individual Education Program that has not been implemented.~~
- ~~(3) The current treatment or education program must use restrictive measures (e.g., seclusion, mechanical or chemical restraints) that would not be necessary with more staff, staff trained more specifically in relation to the minor's behavior, if the program offered more security, or if needed service supports were available.~~
- ~~(4) Multiple residential treatment placements (more than three in a one-year period), which are disrupted due to the inability of the placement to provide supports or services which are sufficient or intensive enough to address the child's treatment needs.~~
- ~~(5) The current treatment plan could be implemented as effectively or more effectively in a less restrictive setting, if one existed and if an array of sufficient support services existed, which would still address the child and community's needs for safety. Examples of a "less restrictive setting," include:~~
 - ~~(A) a setting that allows the minor more mobility, more exchange with peers, family or community outside of the treatment setting, and which still addresses the child and community's needs for safety;~~
 - ~~(B) a smaller, more home like setting or a more normalized environment; and~~
 - ~~(C) the minor's own home.~~

~~(b) In addition to meeting at least one of five conditions listed in this Rule, there must be evidence that the child's treatment and education needs are not or could not be met through existing and readily available services and supports which the child can access, or to which the child is entitled from any source.~~

~~(c) If a child is denied eligibility for services based on the determination that needs can be met through existing services which are not currently being provided, the area program, contract agency or Division shall ensure the provision of such services.~~

~~(d) For minors who are determined ineligible due to a finding that the current services are appropriate to their needs, evidence of changes in services or in treatment needs which cannot be met through available services shall be submitted to the Division for a re-review of eligibility.~~

~~(e) In the case of known and identified future service needs which do not exist or are not available, a request for re-review of eligibility may be made up to 90 days prior to discharge from or change in the current services.~~

~~(f) The request for re-review of eligibility determination shall include information on the service needs of the applicant which cannot be met by the currently available services.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0207 Eff. February 7, 1997.~~

~~10A NCAC 29A .0115 APPLICATION FOR DESIGNATION AS YOUTH BEHAVIORAL SERVICES CLIENT~~

~~(a) Any individual may make application for a minor as a potential Youth Behavioral Services Client by submitting an application to either the area program or contract agency whose catchment area includes the minor's legal county of residence or to the Division.~~

~~(b) Area programs shall not discourage the application of any minor and staff shall assist in preparing the application.~~

~~(c) Within 30 days of receiving an application from another agency or individual which is incomplete, the area program or contract agency shall collect and forward to the Division information needed to complete the application process, as outlined by the Division.~~

~~(d) Consent from the legally responsible person shall accompany the application.~~

~~(e) If someone other than the legally responsible person makes application for eligibility, and the application is submitted without consent from the legally responsible person, the Division shall notify the appropriate area mental health program or contract agency to obtain the required consent in order to make an eligibility determination. A formal eligibility determination shall not be made without consent from the legally responsible person.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0208 Eff. February 7, 1997.~~

~~10A NCAC 29A .0116 DETERMINATION OF ELIGIBILITY~~

~~(a) The Director, or his designee, shall determine the eligibility of an applicant for designation as a Youth Behavioral Services Client, according to the scope and criteria outlined in the Rules .0108, .0111, .0112, .0113, and .0114 of this Section.~~

~~(b) The Director, or his designee, shall develop application requirements for applicants, area programs and contract agencies, and other agencies which are consistent with the criteria outlined in the rules and are designed to facilitate the appropriate and timely identification of clients who meet Youth Behavioral Services Client eligibility criteria.~~

~~(c) The Director, or his designee, shall ensure that information submitted for eligibility determination is reviewed by individuals with expertise and experience related to serving children with emotional, mental or neurological handicapping conditions accompanied by behavior characterized as assaultive or violent.~~

~~(d) During the submission process, all information shall be reviewed by Division staff who may request clarification or additional documentation to complete the application package. The Division shall reimburse area programs or contract agencies for services required in order to collect needed information for application packages and, if necessary, for conducting evaluations the Division determines are needed in order to gather sufficient information to make an eligibility determination.~~

~~(e) Within 30 days of obtaining a complete application package, a notice of the decision in response to the application shall be issued by the Division to the legally responsible person for the applicant, to the area director, the area Youth Behavioral Services Coordinator, the appropriate school system, and the referring individual or agency. Changes in circumstances of the applicant or legally responsible person or a request to obtain or review additional information in support of the application may result in a delay in~~

~~the 30 day timeline. The Division shall notify the legally responsible person of any extension in the timeline for review of the application and the reasons for the extension. Extensions of the 30 day timeline for such reasons do not constitute a failure by the Division to meet the requirements set forth in this Rule.~~

~~(f) A separate formal letter containing the Notice of Decision shall be sent to the legally responsible person of the minor notifying them of the decision.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W.0209 Eff. February 7, 1997.~~

~~10A NCAC 29A .0117 RE-REVIEW OF ELIGIBILITY DECISIONS~~

~~(a) The Division shall retain the application package for each applicant determined to be not eligible until the applicant's eighteenth birthday, and shall re-review (reconsider) the decision upon request if there is reason to believe that the applicant's handicapping condition, behavior and service needs meet the criteria. A request for re-review shall be submitted to the Division by the legally responsible person or advocate, and shall be accompanied by any new information or information not previously submitted.~~

~~(b) If the legally responsible person or advocate, the referring agency or individual, or the area program or contract agency disagrees with the determination of eligibility decision, they may request, in writing, that the Division conduct an Administrative Re-review of the original application package and resultant decision. A request for re-review shall be submitted to the Division by the party making the request, and shall be accompanied by any new information or information not previously submitted, and with the consent of the legally responsible person if they are not initiating the re-review request. The request for an Administrative Re-review shall include a statement summarizing the basis for the request.~~

~~(c) If additional information is needed in order to conduct a re-review and is not provided with the re-review request, the Division shall request that information and notify the legally responsible person or advocate and involved area mental health or contract agency of the information request and the reason for any delay in the re-review process.~~

~~(d) The Division shall re-review the original application, reconsider the earlier decision, and issue another eligibility decision within 30 days of receipt of a complete Administrative Re-Review request. All parties notified of the original decision shall be notified of the re-review decision.~~

~~(e) If the minor, the legally responsible person or advocate disagrees with the decision from the Administrative Re-Review, either party may initiate a contested case hearing to resolve the dispute.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W.0210 Eff. February 7, 1997.~~

~~10A NCAC 29A .0118 NEEDS ASSESSMENT~~

~~(a) Each Youth Behavioral Services Client shall receive assessments and evaluations that are necessary for a thorough and accurate understanding of the minor's essential needs in the desired outcome domain areas: social, behavior, education, vocation, housing/residential, and health (including mental health).~~

~~(b) Essential needs shall be identified without regard to service availability.~~

~~(c) Essential needs in each of the six outcome areas set forth in Paragraph (a) of this Rule shall be addressed and prioritized within each domain as to their relative importance in the minor's life at the particular time. To the extent that needs must be prioritized, such prioritization shall relate to the timing of addressing needs rather than whether they should be addressed at all.~~

~~(d) Factors in both assessing and determining needs shall include:~~

~~(1) the minor's capabilities and potential;~~

~~(2) the minor's need for stability in personal relationships and the ability of caregivers (family and staff) to provide that stability;~~

~~(3) major risks to the minor's health, safety and integration with the community; and~~

~~(4) the minor or community's need for safety.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. March 1, 1997.~~

~~10A NCAC 29A .0119 SERVICE PLANNING~~

(a) Each Youth Behavioral Services Client shall have an individualized treatment/habilitation plan (T/HP) developed within 30 days of notice of eligibility as a Youth Behavioral Services Client. If identified as eligible for Exceptional Children's education services, the child shall also have an Individual Education Plan (IEP).

(b) The legally responsible person and client shall participate in development of the habilitation plan, and the Division shall facilitate this participation.

(c) The habilitation plan shall address the client's essential needs and reflect the prioritization required as a result of timing and developmental progress.

(d) Goals, objectives and strategies shall address movement toward a transition into adulthood that is consistent with the client's capabilities and potential and the reasonably expected life and problems the client will encounter as an adult.

(e) The habilitation plan shall provide each client with the most normal, least restrictive living arrangements and conditions appropriate to individual needs.

(f) The habilitation plan shall address the client's need for safety for both self and others. The need for least restrictive environment and the need to minimize the possibility of harm to the client and to society are factors to be considered in determining the level of restriction for the client's treatment and education setting.

(g) The habilitation plan shall include:

(1) goals, or global end results and objectives, or intermediate results, to be accomplished in order to achieve the identified goal.

(2) strategies and individual assignments for implementation, facilitation, and responsibility for each strategy (e.g., minor, legally responsible person, agency representative, etc.).

(3) measures of progress to be used for strategies directed toward the long term desired outcomes for the client.

(4) risks (e.g., behavioral regression, medical deterioration) that threaten success of the plan, and supports and services to anticipate and address such risks.

(5) strategies for addressing crises.

(h) The habilitation plan shall be reviewed and revised with participation of the legally responsible person and client, as needed, but at least annually, based on changes in the child, including progress or lack of progress, significant life events, deterioration, and criminal behavior.

(i) As early as needed, but no later than age 16, a new habilitation plan shall be developed that includes specific goals, objectives and strategies related to transition to adulthood.

History Note: Authority G.S. 122C-3; 122C-112; 122C-194;

Eff. February 1, 1997;

Transferred and Recodified from 10 NCAC 18W .0212 Eff. February 7, 1997.

10A NCAC 29A .0120 PROVISION OF SERVICES

(a) Services, with sufficient intensity and continuity to meet essential needs, shall be provided immediately to the extent that they are available.

(b) Services shall be directly related to the goals and objectives identified in the habilitation plan.

(c) To the extent necessary for the individual client, appropriate resources (neighborhood, extended family, church and other community resources) shall be used to facilitate integration into the client's existing or anticipated adult community.

(d) If needed placements and services, other than residential, do not exist or are not available, they shall be developed and implemented within 30 days after the habilitation plan is developed unless a longer period is agreed upon by the legally responsible person and the area program or contract agency. The timetable for development and implementation of needed residential services shall be agreed upon by the legally responsible person and the area program or contract agency. The habilitation plan shall include the timelines by which appropriate services will be developed and provided.

(e) The area program or contract agency shall take the necessary steps to develop and implement the needed services and shall notify the Division and seek necessary assistance for developing needed services.

~~(f) The minor's T/HP shall include services and supports which will be provided in the interim, until appropriate services are available.~~

~~(g) In addition, the T/HP shall include timelines by which appropriate services will be developed and provided.~~

~~(h) Prior to development and implementation of needed services, a Youth Behavioral Services Client shall receive, in the interim, services which meet as nearly as possible all essential needs.~~

~~(i) Services for a Youth Behavioral Services Client may continue beyond the client's eighteenth birthday if the individual:~~

~~(1) continues to be in need of such treatment and will benefit from continuing placement or involvement in services which the client is receiving treatment on his/her eighteenth birthday; and~~

~~(2) voluntarily agrees to continue treatment in those services in a manner consistent with state law or is confined pursuant to applicable state law.~~

~~If the conditions in this Paragraph are met, services may continue beyond the client's eighteenth birthday for six months or until the end of the current fiscal year, whichever is longer. If, after turning eighteen and before the extension period has been exhausted, the client decides to terminate or ceases participation in services, the client's eligibility for continued services under these rules ends at that time.~~

~~(j) A determination of eligibility as a Youth Behavioral Services Client shall not preclude or prevent access to services to which the minor would otherwise be entitled.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0213 Eff. February 7, 1997.~~

~~10A NCAC 29A .0121 AREA PROGRAM REQUIREMENTS~~

~~(a) Area programs or contract agencies shall, directly or through contract agencies, provide services for Youth Behavioral Services Clients whose legal county of residence is located in their catchment area.~~

~~(b) Each area program or contract agency shall establish procedures for providing services to Youth Behavioral Services Clients, including designation of an area program Youth Behavioral Services Client Coordinator, submission of required information and reports to the Division, and information gathering and preparation of needed evaluations for applications of potential Youth Behavioral Services Clients.~~

~~(c) Each area program or contract agency that has a Youth Behavioral Services Client shall establish and maintain accreditation for provision of services to Youth Behavioral Services Clients pursuant to 10a NCAC 27G .0700, Accreditation of Area Programs and Services, contained in Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities and Services, Division publication APSM 30-1.~~

~~(d) Each area program or contract agency shall comply with budgeting and fiscal requirements as established by law.~~

~~(e) Each area program or contract agency shall assist in the collection or development of information needed to process applications for potential Youth Behavioral Services Clients.~~

~~(f) Each area program or contract agency shall develop individualized treatment/habilitation plans (T/HPs) for each eligible YBSC.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. March 1, 1997.~~

~~10A NCAC 29A .0122 DIVISION REQUIREMENTS~~

~~The Division shall:~~

~~(1) regularly monitor provision of services to individual Youth Behavioral Services Clients, including periodic sample reviews of the individual treatment/habilitation plans of Youth Behavioral Services Clients.~~

~~(2) monitor, at least on an annual basis, a sample of Youth Behavioral Services Clients and make determinations as to whether they are receiving needed services.~~

- (3) ~~address service deficiencies for individuals and groups of Youth Behavioral Services Clients and take steps necessary to meet the client's needs, as those deficiencies are identified through special as well as ongoing monitoring activities.~~
- (4) ~~ensure that there is a review of a sample of its determinations as to appropriate services for individual Youth Behavioral Services Clients and of a sample of its assessments of local systems of services conducted by an independent entity on at least a biannual basis.~~
- (5) ~~together with the Department of Public Instruction, monitor on an annual basis the provision of services by local programs, including area mental health programs, local school systems, and other local agencies or contract agencies which have responsibilities for services to Youth Behavioral Services Clients.~~
- (6) ~~provide funding to area programs and contract agencies for Youth Behavioral Services Clients, for services, and for information gathering by area programs or contract agencies as part of the application process for Youth Behavioral Services Clients, as made available from the General Assembly and through federal sources. These funds shall be expended according to applicable State laws. Funds appropriated by the General Assembly for Youth Behavioral Services Clients shall be expended only for programs serving Youth Behavioral Services Clients, including evaluations of applicants.~~
- (7) ~~reallocate these funds among services to Youth Behavioral Services Clients during the year as it deems advisable in order to use the funds efficiently in providing appropriate services to Youth Behavioral Services Clients.~~
- (8) ~~notwithstanding any other provision of law, if the Division determines that a local program is not providing appropriate services to Youth Behavioral Services Clients, the Division shall ensure the provision of these services through contracts with public or private agencies or by direct operation by the Division of such services.~~

*History Note: Authority G.S. 122C-3; 122C-112; 122C-194;
Eff. March 1, 1997.*

10A NCAC 29A .0123 PRIOR NOTICE OF DECISION

(a) ~~Notice of decision shall be given to a minor's legally responsible person and advocate whenever the Division, an area program or other service providing agency initiates or proposes to change; or after request by the minor's legally responsible person or advocate refuses to initiate or change:~~

- (1) ~~the eligibility status of a Youth Behavioral Services Client or applicant;~~
- (2) ~~a client's needs assessment;~~
- (3) ~~a client's T/HP; or~~
- (4) ~~a client's services or placement.~~

(b) ~~Timing: Notice of decision shall be provided within a reasonable time prior to the intended action, but not later than ten days prior to the effective date of the proposed action for eligible Youth Behavioral Services Clients. Notice of decision for an eligibility determination decision shall be provided when the decision is made by the Division. The minor's legally responsible person or advocate may appeal the eligibility decision from this point in time.~~

(c) ~~Means of Notice: The notice of decision shall be in writing in language understandable to the general public, and provided in the native language or other mode of communication of the legally responsible person or advocate unless it is clearly not feasible to do so. The area program, contract agency or Division shall document both that the notice has been sent to and efforts to ensure receipt by the legally responsible person or advocate.~~

(d) ~~The characteristics of Youth Behavioral Services Clients may necessitate the prompt initiation or changes in services in response to unanticipated needs or behaviors or in order to ensure the ongoing safety of the clients or community. In these situations, the area program or contract agency shall take the steps necessary to ensure the safety of the client or community, including the initiation, change or cessation of services. The area program or contract agency shall then immediately provide notice to the legally responsible person or advocate of the actions taken and the reasons for the actions.~~

~~(e) Content: The notice of decision, at a minimum, shall state the name of the client or applicant, the action requested, the intended action or refusal to act, and the effective date of the proposed action or refusal to act. In addition, the notice shall:~~

- ~~(1) explain why the agency proposes to act or refuses to act;~~
- ~~(2) describe the evaluation or assessment procedures, tests, records or reports that the agency uses as a basis for the proposed action or refusal;~~
- ~~(3) describe any other factors relevant to the agency's decision;~~
- ~~(4) describe any options that agency considered, and why those options were rejected, if applicable; and~~
- ~~(5) provide a full explanation of the client's procedural safeguards with respect to the agency's decision, including:~~
 - ~~(A) the right to voluntary mediation, how to request it, and to whom to make the request;~~
 - ~~(B) the right to an impartial administrative review under contested case hearing procedures, the grounds specified in G.S. 122C 195 for obtaining administrative review of proposed decisions, the procedure for initiating administrative review, and the time limits in which to initiate administrative review;~~
 - ~~(C) the right to review the decision and the opportunity to examine records related to the decision;~~
 - ~~(D) the right to seek an independent evaluation;~~
 - ~~(E) the right to be represented by counsel; and~~
 - ~~(F) in the case of a determination of noneligibility, the right to submit additional information and request an administrative re review of eligibility before proceeding with a contested case hearing.~~

~~History Note: Authority G.S. 122C 3; 122C 112; 122C 194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0216 Eff. February 7, 1997.~~

~~10A NCAC 29A .0124 MEDIATION~~

~~(a) If after prior notice of the proposed change in the needs assessment, plan or services for a Youth Behavioral Services Client, there is a dispute over the specific action or the rationale for the action included in the prior notice, the Director of the area program, contract agency or Division shall implement, or the legally responsible person or advocate for a Youth Behavioral Services Client may request, a facilitation of resolution of the dispute.~~

~~(b) When a facilitation of resolution process has been agreed to by the legally responsible person or advocate, the Director of the area program or contract agency shall notify the Division and shall meet, or designate an assistant or associate to meet with the legally responsible person or advocate, other involved local agency representatives and regional staff for the Division assigned responsibility for Youth Behavioral Services Clients to facilitate resolution of the dispute prior to formal mediation. Facilitation of resolution of the dispute shall occur within ten days of the initiation of the facilitation process by either the involved local agency or by the legally responsible person or advocate.~~

~~(c) If a consensual agreement is not reached through the facilitation of resolution process within ten days after the initiation of the facilitation of resolution process, or if the legally responsible person or advocate does not wish to participate in a facilitation of resolution process, the legally responsible person or advocate may request voluntary third party mediation as described in G.S. 122C 197. Such a request shall be made, formally or informally, to the director of the involved area program, to the director of the agency proposing the decision, or to the designee of either agency as identified in the prior notice or notice.~~

~~(d) Upon receiving a request for voluntary third party mediation, the director, or designee, of the agency proposing the decision shall schedule and conduct, within ten working days of the initiation of the mediation process, a mediation with the individuals designated in G.S. 122C 197. The meeting shall be informal and nonadversarial. No witnesses shall be placed under oath or cross examined.~~

~~(e) Requests for mediation of disputes regarding eligibility decisions shall be made directly to the Division.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. February 1, 1997;~~

~~Transferred and Recodified from 10 NCAC 18W .0217 Eff. February 7, 1997.~~

~~10A NCAC 29A .0125 CONTESTED CASE HEARINGS~~

~~(a) The legally responsible person or advocate may obtain review of proposed decisions on the grounds and in the manner specified in G.S. 122C-195.~~

~~(b) Any agency served with a petition seeking such review shall advise the Division and the appropriate area authority immediately and furnish each with a copy of the petition if the Division or the area authority have not been named as parties.~~

~~(c) A local or state agency may obtain review as provided by these rules and applicable state laws if a legally responsible person or advocate refuses to consent to the evaluation of the minor or to the provision of services for a Youth Behavioral Services Client if there is a reason to believe that such refusal to consent constitutes medical neglect of the minor's treatment needs, person or advocate, area program/contract agency director, and Division Director.~~

~~(d) A decision made pursuant to a contested case hearing shall be in writing and shall be provided to the legally responsible person or advocate, area program/contract agency director, and Division Director.~~

~~(e) The local or state agency shall inform the legally responsible person or advocate of the right to representation by counsel and of any free or low cost legal or other relevant services available in the area.~~

~~(f) During the pendency of any administrative or judicial proceeding regarding a dispute governed by these rules, unless the local or state agency and the legally responsible person agree otherwise, the child involved in the dispute must remain in present services.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 122C-194;~~

~~Eff. March 1, 1997.~~

~~10A NCAC 29A .0126 ADMINISTRATIVE REVIEW BY REVIEW OFFICER~~

~~(a) Appeal to Review Officer: Any party to an administrative review proceeding may appeal the decision of the administrative law judge to an impartial Review Officer as specified in G.S. 122C-199. Notice of the appeal shall be directed to the Division Director.~~

~~(b) Review Officer Pool: The Director shall establish a pool of individuals approved to serve as Review Officers for appeals of Youth Behavioral Services Client decisions. The list of approved Review Officers in the pool and their qualifications shall be made available on request. Review Officers shall meet the following qualifications:~~

~~(1) Review Officers shall be professionals in the fields of education, mental health, social services, law, or medicine, or shall be qualified by relevant education and experience in the area of services for children who have emotional, mental or neurological handicaps and accompanying violent and assaultive behavior, and shall have background in or knowledge about the eligibility criteria for Youth Behavioral Services Clients.~~

~~(2) Review Officers shall have experience in, or receive training in, the conduct of administrative hearings.~~

~~(3) Review Officers may not be employees or officials of either the Department of Human Resources, the Department of Public Instruction, the Office of the Governor, or of any agency involved in the care of the minor who is the subject of the case. A person is not disqualified as an employee merely because he or she is paid by the agency to serve as a Review Officer.~~

~~(4) Review Officers shall disqualify themselves in cases of personal or professional conflicts of interest or in cases where substantial portions of their income are derived through contractual arrangements with an involved agency.~~

~~(c) Conduct of Review:~~

~~(1) Upon selection of a Review Officer, the agency shall forward the hearing record to the Review Officer.~~

- (2) ~~The Review Officer shall review the entire hearing record and determine whether:~~
 (A) ~~the procedures at the contested case hearing were consistent with the requirements of the Administrative Procedures Act;~~
 (B) ~~to conduct an additional hearing in accordance with the procedures set forth in this Paragraph; and~~
 (C) ~~to afford the parties oral or written argument.~~
- (3) ~~If the Review Officer determines that new evidence would be material to the issues, not merely cumulative, and could not reasonably have been presented at the contested case hearing, he shall conduct a hearing to receive additional evidence.~~
- (4) ~~If the Review Officer determines to afford the parties oral or written argument, he shall notify them of the timing and parameters of the argument. The provisions of G.S. 150B with respect to the reception of evidence shall apply.~~
- (5) ~~Upon completion of review, the Review Officer shall issue a written decision, including findings of fact and conclusions of law. Such decision shall be issued as soon as practical but not more than 45 days after the institution of the appeal provided in Paragraph (a) of this Rule. The Review Officer shall serve a copy of the decision on each party, with copies to the attorneys of record, and shall include with it the notice required by G.S. 122C-199 informing the parties of their right to file a civil action and the 30-day limitation for filing such an action.~~

*History Note: Authority G.S. 122C-3; 122C-112; 122C-194;
Eff. February 1, 1997;*

Transferred and Recodified from 10 NCAC 18W .0218 Eff. February 7, 1997.

10A NCAC 29A .0127 EVALUATION REPORTS

- (a) ~~Area programs shall submit information on the impact of treatment and education services on members of the Willie M. class to the Division to facilitate reporting of this information to the General Assembly and the Governor as required by the 1982 Appropriations Bill.~~
- (b) ~~Area programs shall submit evaluation reports according to the instructions provided in division publication APSR-60-1, Evaluation Reports for Willie M. Class Members While Receiving Services adopted pursuant to G.S. 150B-14(c).~~

*History Note: Authority G.S. 122C-114; 143B-10; S.L. 1282, c. 1282;
Eff. July 1, 1983;*

Amended Eff. March 1, 1990.

SUBCHAPTER 29B—THOMAS S. SERVICES

SECTION .0100—THOMAS S. COMMUNITY SERVICES

10A NCAC 29B .0101—THOMAS S. COMMUNITY SERVICES

- (a) ~~Funds appropriated to the Division for members of the Thomas S. Class as identified in the Thomas S., et al v. Britt, formerly Thomas S., et al v. Flaherty lawsuit, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:~~

- (1) ~~adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a state psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities and Substance Abuse Services' official list of prospective class members including focus class members;~~
 ~~or~~
- (2) ~~adults with mental retardation who:~~
 (A) ~~have a documented history of State psychiatric hospital admission regardless of admission date; or~~
 (B) ~~have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment; and~~

- ~~(C) — without funding support, have good probability of being admitted to a State psychiatric hospital. Expenditures for services to clients listed in Subparagraph (a)(2) of this Rule are limited by legislation and require specific approval by the Division.~~

~~(b) Programs operated by an area program or a program contracted by the area program or a provider under direct contract with the Division to provide may spend funds for Thomas S. Services funds for the following:~~

- ~~(1) — facility rental;~~
- ~~(2) — utilities;~~
- ~~(3) — staffing;~~
- ~~(4) — supplies;~~
- ~~(5) — travel;~~
- ~~(6) — rental and purchase of administrative and program equipment according to the following provisions:~~
 - ~~(A) — equipment is defined as purchases costing five hundred dollars (\$500) or more and having a useful life of at least one year;~~
 - ~~(B) — all equipment purchased with Thomas S. Service funds shall be inventoried and identified as Thomas S. equipment and shall be used for Thomas S. services;~~
 - ~~(C) — equipment may be held in the name of a contract provider with the stipulation that if the equipment ceases to be used to provide services to Thomas S. clients, ownership shall revert to the contracting area program who shall then contact the Division for disposition instructions;~~
 - ~~(D) — the Division shall be notified whenever equipment purchased with Thomas S. Service funds ceases to be used to provide services to Thomas S. Clients for 45 consecutive days; and~~
 - ~~(E) — the disposition of equipment purchased with Thomas S. funds shall require Division approval;~~
- ~~(7) — administrative cost which can be documented as Thomas S. administrative costs through direct assignment or Division approved cost allocation methodology;~~
- ~~(8) — transportation of clients;~~
- ~~(9) — other program costs;~~
- ~~(10) — in accordance with G.S. 122C 147, the purchase, construction and alteration, improvement or rehabilitation of a facility owned by the area program or county for the provision of day/night or 24 hour services by an area program or non profit contract agency; or mortgage payments for private non-profit agencies according to the following provisions of Rule .1123 of this Section; and~~
- ~~(11) — except as provided in Paragraph (a) of this Rule, Thomas S. Operating funds shall not be used to serve other than Thomas S clients.~~

~~(c) Funds provided by the Division for Thomas S. services shall not be used to purchase client personal possessions or clothing unless:~~

- ~~(1) — a unique situation has been documented;~~
- ~~(2) — this expenditure cannot be covered from another source.~~

~~(d) Start up funds, defined as funding provided to establish or prepare a facility or program for the provision of services, are required to be settled on an expenditure basis, may be provided to an area program or contract providers, including contract providers under direct contract with the Division, in accordance with the following provisions:~~

- ~~(1) — Expenditures for start up may be approved in accordance with Paragraph (b) of this Rule with the following restrictions:~~
 - ~~(A) — vehicles are allowable expenditures if:~~
 - ~~(i) — no other method of transportation is available;~~
 - ~~(ii) — other methods are cost prohibitive; or~~

- (iii) ~~at least four Thomas S. Clients will receive transportation services from the vehicle.~~
- (B) ~~furnishings for residential and day services shall be limited to functional items and shall not include stereos, video cassette recorders, microwaves or similar items unless programmatic benefit is established;~~
- (2) ~~Requests for start up funds shall be made by the area program, or through the area program in the case of a contract provider, in whose catchment area the new program or program component is being established and is not required to be client specific;~~
- (3) ~~Request for start up funding shall be made in writing to the Division Director at least (90) days prior to need and shall include a line item budget and written justification; and~~
- (4) ~~Request for start up funding may include expenses for normal operations such as staff, utilities and rent but is limited and may not exceed (60) days;~~
- (e) ~~Funds provided by the Division to support Thomas S. services, except as noted in Paragraph (d) of this Rule, shall be discontinued if the program fails to serve any Thomas S. clients.~~
- (f) ~~Funds shall be awarded to the area program by the Division based on need and the availability of funds. The annual budget for the programs serving Thomas S. clients shall be budgeted in a separate cost center. Such cost centers shall include all sources of revenue which support the costs of Thomas S. clients.~~
- (g) ~~Thomas S. Class members, as defined in Subparagraphs (a) (1) and (2) of this Rule, shall not be excluded from participating in programs or services for which they are eligible and which are funded from other sources.~~
- (h) ~~The area program and contract provider shall provide financial and client data regarding Thomas S. Services to the Division according to instructions from the Division.~~

History Note: Authority G.S. 122C 147;

Eff. July 1, 1994;

Amended Eff. February 1, 1996.

~~10A NCAC 29B .0102 SCOPE~~

- (a) ~~The rules in this Section set forth requirements for reporting and reviewing deaths of prospective and confirmed Thomas S. class members residing in non-state operated facilities.~~
- (b) ~~These Rules shall apply to area mental health, developmental disability and substance abuse authorities and their contract agencies.~~
- (c) ~~These requirements shall not apply to prospective and confirmed Thomas S. class members residing in their own home or in the home of their family, and receiving no mental health, developmental disability or substance abuse services.~~

History Note: Authority G.S. 108A, Article 6; 122C 112(a)(15); 122C 191; 130A 383; 130A 389; 130A 398;

Eff. August 1, 1998.

~~10A NCAC 29B .0103 DEFINITIONS~~

~~In addition to the definitions contained in G.S. 122C 3 and Rule .0103 of this Subchapter, the following definitions shall also apply:~~

- (1) ~~"Home Area Program" means the responsible Area Program where the prospective or confirmed class member is legally entitled to services.~~
- (2) ~~"Pioneer Unit Cost Reimbursement (PUCR) system" means a purchase of service model of funding where the Division of MH/DD/SAS reimburses Area Programs based on the volume of services reported to the Division.~~
- (3) ~~"Prospective and confirmed class members" means those individuals designated on the Thomas S. Master List and assigned to an Area Program.~~
- (4) ~~"Unit Cost Reimbursement Thomas S. System" means the Division's computerized system of reimbursing Area Programs based on the volume of Thomas S. services reported to the Division.~~

History Note: Authority G.S. 108A 99; 108A 100; 108A 101; 108A 102; 108A 103; 108A 104; 108A 105; 108A 106; 108A 107; 108A 108; 108A 109; 108A 110; 108A 111; 122C 112(a)(15); 122C 191; 130A 383; 130A 389 130A 398;
Eff. August 1, 1998.

10A NCAC 29B .0104 REPORTING REQUIREMENTS

- (a) Staff of an area program or provider agency under contract with an area program shall immediately report the known death of any Thomas S prospective or confirmed class member, not residing in a state facility, to the area director or designee. The date the area authority is notified of the death shall be documented.
- (b) A telephone report shall be made to the Thomas S. Services Section, Client Services Branch, by the Area Director or designee, on the first working day after being notified of a Thomas S. prospective or confirmed class member's death. This report shall be followed up by written notification to the Thomas S. Services Section, and include the date the area program was notified of the death. Upon notification of the death, any designated staff of the Thomas S. Services Section may go unannounced to the site of the death or to the client's residence prior to death.
- (c) Staff of the home area program shall notify the medical examiner of the county in which the body is found with regard to deaths under circumstances described in G.S. 130A 383.
- (d) Within 72 hours of being notified of a death, the Area Director or designee shall ensure that the chairman of the local committee responsible for review of the deaths is notified.
- (e) In the case of a death which may be the result of abuse, neglect, or exploitation, and where there is reason to believe that other disabled adults at the site may be abused, neglected or exploited and in need of protective services, the procedures outlined in G.S. 108A, Article 6 shall be followed.
- (f) In deaths not under the jurisdiction of the medical examiner, the next of kin or other individual authorized according to G.S. 130A 398, shall be notified by the Area Director or designee that an autopsy may be requested as designated in G.S. 130A 389.
- (g) In the case of a death that occurs as a result of an accident, suicide, or other questionable circumstances the police shall be notified immediately.

History Note: Authority G.S. 108A 99; 108A 100; 108A 1011; 08A 102; 108A 103; 108A 104; 108A 105; 108A 106; 108A 107; 108A 108; 108A 109; 108A 110; 108A 111; 122C 112(a)(15); 122C 191; 130A 383; 130A 389; 130A 398;
Eff. August 1, 1998.

10A NCAC 29B .0105 DEATH REVIEW REQUIREMENTS

The death of any prospective or confirmed class member not residing in a state facility shall be reviewed by a local committee designated by the Area Director.

- (1) The committee designated to review deaths shall include a physician. There must be a provision for substitution if existing committee members were involved in the case at issue.
- (2) The committee shall review relevant aspects of the individual's care in order to identify any acts, policies, or practices which may have contributed to the death. The committee shall have access to all medical records, hospital records and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this Section, including police investigations data, medical examiner investigative data, health records, mental health records and social services records, as designated in G.S. 122C 112(a)(15).
- (3) The committee shall investigate and analyze any circumstances surrounding the death that it considers to be unusual, as specified in G.S. 122C 112(a)(15).
- (4) A report from the area authority shall be issued following each review and sent to the Thomas S. Services Section, Division of MH/DD/SAS within 90 days of the death of a confirmed class member, and within 90 days of the area program being notified of the death of a prospective class member. This report shall include the following:
 - (a) name and unique ID;

- (b) — date and place of death;
- (c) — residential and vocational providers and addresses;
- (d) — age and diagnoses;
- (e) — circumstances surrounding the death;
- (f) — medical information/history, including medical diagnoses, medications, recent treatment, and the cause of death;
- (g) — brief description of staff responses to medical needs around the time of death;
- (h) — involvement, if applicable, by law enforcement or other agencies;
- (i) — summary of unusual circumstances leading to the death;
- (j) — actions taken and recommendations;
- (k) — signature of person preparing the report and date;
- (l) — Area Program medical director review and comments, if the report was not prepared by the medical director; and
- (m) — a copy of the death certificate.

The report shall address any local policies or practices that have been or will be revised as a result of the review; and state policies or practices that should be re-examined as a result of the review. The report shall not contain confidential peer review information produced solely under the proceedings of a quality assurance committee established under G.S. 122C-191.

- (5) — In order to facilitate adequate follow up and review in Area Programs, the Division's Pioneer and Thomas S. Unit Cost Reimbursement Systems, as defined in 10A NCAC 27A .0215 and 29B .0101 shall be available for billing under QA Peer Review Activity or Quality Improvement/Quality Assurance Activity, following the death of a Thomas S. class member.

History Note: Authority G.S. 108A-99; 108A-100; 108A-101; 108A-102; 108A-103; 108A-104; 108A-105; 108A-106; 108A-107; 108A-108; 108A-109; 108A-110; 108A-111; 122C-112(a)(15); 122C-191; 130A-383; 130A-389; 130A-398; Eff. August 1, 1998.

10A NCAC 29B .0106 THOMAS S. MORTALITY REVIEW COMMITTEE

(a) A Thomas S. Mortality Review Committee shall operate at the state level and shall be appointed by the Thomas S. Services Section Chief.

(b) The Committee shall at a minimum include a physician and a representative of the Thomas S. Services Section.

(c) Responsibilities of the Committee shall include, but not be limited to:

- (1) — insuring that reports by local committees include all required information, and that they evaluate health care and other protection issues relative to the deaths of class members and make recommendations where appropriate;
- (2) — recommending an independent investigation of any death it reviews if the Committee deems it necessary;
- (3) — assuring follow up by the Thomas S. Services Section if the death review report by the local committee is not timely or complete;
- (4) — identifying systemic issues and making recommendations addressing those issues to the Thomas S. Services Section Chief and Division Director as needed; and
- (5) — Routinely publishing/distributing medical advisories and information as appropriate to assure needed follow up.

(d) The Thomas S. Mortality Review Committee shall have access to all medical records, UCR-TS reports, Thomas S. Longitudinal Study data, hospital records and records maintained by the State, any county or any local agency necessary to carry out the purposes of this Section, including police investigations data, medical examiner investigative data, health records, mental health records and social services records as specified in G.S. 122C-112(a)(15).

- ~~(e) When corrective action is deemed necessary by the Division Director, the Division Director shall request a corrective action plan from the area authority.~~
- ~~(f) The Chairman of the Thomas S. Mortality Review Committee shall review implementation of recommendations made by the Committee and corrective action plans established by the Division Director.~~
- ~~(g) The Committee Chairman shall make an annual status report to the Committee and to the Thomas S. Services Section Chief on implementation and corrective actions taken.~~
- ~~(h) The Thomas S. Services Section will collect and analyze mortality and other statistics to determine trends and quality of life issues related to the deaths of Thomas S. class members.~~
- ~~(i) The deliberations of local review committees and the Thomas S Mortality Review Committee shall be confidential. Reports of the Thomas S. Mortality Review Committee, however, are subject to the North Carolina Public Records Act and shall be available upon request with due regard to privacy and confidentiality of involved persons.~~

~~History Note: Authority G.S. 122C 112(a) (15); 108A, Article 6; 122C 191; 130A 33; 130A 389; 130A 398;~~

~~Eff. August 1, 1998.~~

SUBCHAPTER 29D - MISCELLANEOUS

SECTION .0100 - CAROLINA ALTERNATIVES

10A NCAC 29D .0101 CAROLINA ALTERNATIVES

- ~~(a) The Division may contract with area programs to implement a managed care program for mental health and substance abuse services for children pursuant to a waiver granted by the Secretary of the United States Department of Health and Human Services in accordance with Title XIX of the Social Security Act, known as the Carolina Alternatives program.~~
- ~~(b) Funding shall be made available through monthly capitation payments received from the Division of Medical Assistance.~~
- ~~(c) Funds shall be awarded and settled based on the provisions in the contract between the Division and the area program.~~
- ~~(d) Enrollees shall have the right to appeal adverse decisions by a contracting area program, which are defined as:
 - ~~(1) denial of a request for first time service or a service other than the current service;~~
 - ~~(2) reduction of a current service;~~
 - ~~(3) suspension of a current service; or~~
 - ~~(4) termination of a current service.~~~~
- ~~(e) The Division shall comply, and shall insure that contracting area programs comply, with the following appeals procedures:
 - ~~(1) Notification letter:
 - ~~(A) The area program shall send, via regular mail or pass by hand, a notification letter at the time of service authorization or at another time not later than 10 working days before the date of the action (reduction, suspension or termination).~~
 - ~~(B) The area program shall mail the notification letter the same day as the date of the letter in order to provide the recipient with the legal time period in which to appeal.~~
 - ~~(C) When hand delivered, documentation that the individual was given notice shall be represented by the date in the notification letter.~~
 - ~~(D) A denial of requested services requires a notification, but is an exception to the 10 day advanced notification requirement.~~~~
 - ~~(2) The notification letter shall contain the following information:~~~~

- (A) ~~specific information (the identification of the area program and type of service under review);~~
- (B) ~~reasons for the decision;~~
- (C) ~~Medicaid regulations that support the decision;~~
- (D) ~~the right to a State informal and formal hearing on the decision;~~
- (E) ~~the right to a hearing when State or Federal law requires a change in service;~~
- (F) ~~circumstances in which an expedited appeal may be requested;~~
- (G) ~~steps required to start an appeal;~~
- (H) ~~circumstances in which Medicaid is continued until a hearing decision. If an individual appeals to the State DMH/DD/SAS or to the Office of Administrative Hearings (OAH) before the effective date of the proposed service reduction, termination, or suspension, noted in the letter, authorization for payment of the individual's current services will continue until a decision is issued; and~~
- (I) ~~that if an individual abandons or loses an appeal, the State has the legal right to recover the cost of the disputed treatment, and that such costs are accumulated from the beginning of the date of the service reduction, termination or suspension.~~
- (3) ~~The notification letter also shall contain treatment continuation information as follows:~~
 - (A) ~~the area program may offer other treatment services when it denies a person's request for a specific treatment.~~
 - (B) ~~the individual may receive the treatment specifically requested by paying for it.~~
 - (C) ~~when and if the individual's medical condition changes, the area program will re-evaluate the request for a specific treatment.~~
- (4) ~~Exceptions to 10 day notification requirement. Notice shall be given no later than the date of the service reduction, termination or suspension where:~~
 - (A) ~~recipient's treating physician changes the service (e.g., discharge from a short term or crisis hospitalization);~~
 - (B) ~~agency has factual information confirming the death of the enrollee;~~
 - (C) ~~agency receives a written statement signed by an enrollee that services are no longer desired; or gives information that requires termination or reduction of services and understands that this must be the result of supplying that information;~~
 - (D) ~~enrollee has been admitted to a service that is not included in the approved service network; and~~
 - (E) ~~location of the enrollee is unknown as certified by the post office.~~
- (f) ~~Requesting a State Informal Hearing:~~
 - (1) ~~Medicaid recipients have a right to an informal hearing by an impartial hearing officer at the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).~~
 - (2) ~~This right shall be secured by returning the appeal form (included with the notification letter) to the State DMH/DD/SAS.~~
 - (3) ~~The form may be sent by mail, facsimile, or hand delivered.~~
 - (4) ~~Upon receipt of an informal appeal request, the DMH/DD/SAS shall contact the enrollee and schedule a hearing before a hearing officer within 30 days from receipt of the written request.~~
 - (5) ~~The DMH/DD/SAS shall inform the enrollee in writing of the hearing date, the hearing procedures, and of their legal rights during the hearing.~~
 - (6) ~~The DMH/DD/SAS promptly shall inform the area program of the appeal. With the enrollee's permission, the area program shall contact the enrollee within three working days of notification from DMH/DD/SAS to begin its impartial dispute resolution process:~~

- ~~(A) Each area program shall have an informal dispute resolution process that is approved in writing by DMH/DD/SAS. Each area program shall submit its local review process and the Division shall review based on whether the recipient has an impartial review process by persons not involved with the original decision; and~~
 - ~~(B) The process shall include both impartial dispute resolution and impartial clinical/medical review.~~
- ~~(7) Informal hearing procedure:~~
 - ~~(A) The enrollee has the right to an in-person hearing. Before the hearing, the enrollee has the right to review the case file and all records that will be used at the hearing.~~
 - ~~(B) The enrollee shall not be denied access to review these documents.~~
 - ~~(C) All written material that the enrollee or his representative want presented at the hearing must be received by the Division hearing office at least five days before the scheduled hearing.~~
 - ~~(D) If the enrollee or his representative fails to appear at the scheduled hearing, without good cause, the hearing still shall be held. "Good cause" means circumstances beyond the control of the enrollee or his representative.~~
 - ~~(E) If at any time during the process the enrollee's medical condition worsens and the enrollee is re-evaluated for authorization for the current or higher service, the informal appeal shall be concluded in favor of the enrollee.~~
 - ~~(F) The hearing officer shall give appropriate consideration to all matters and documents presented either by the enrollee or by the area program. Witnesses shall not be required to take an oath before making a statement.~~
 - ~~(G) Neither the North Carolina Rules of Evidence, the Federal Rules of Evidence, the North Carolina Rules of Civil Procedure, nor the Federal Rules of Civil Procedure shall govern the hearing procedures.~~
 - ~~(H) The hearing officer shall insure that the hearing is conducted in a fair, impartial, and non-adversarial manner.~~
 - ~~(I) The hearing officer shall issue a written decision of his findings and conclusions, and shall send a copy to the enrollee and to the area program. The written decision shall notify the enrollee of the right to appeal an adverse decision to the Office of Administrative Hearings (OAH) and the time period within which such appeal must be filed. The written decision shall include a Petition for Contested Case Hearing appropriate for filing at OAH.~~
- ~~(8) State Formal Hearing:~~
 - ~~(A) The enrollee has the right to appeal an adverse decision by an area program directly to the OAH for a formal, evidentiary hearing.~~
 - ~~(B) The enrollee also may appeal a DMH/DD/SAS hearing officer's adverse decision to OAH.~~
 - ~~(C) Either appeal must be filed in accordance with G.S. 150B.~~
 - ~~(D) If an enrollee appeals an area program adverse decision directly to OAH before the effective date of the proposed reduction, termination, or suspension, authorization for the current service shall continue until a Recommended Decision is issued by OAH.~~
 - ~~(E) If an enrollee appeals an area program adverse decision after the effective date of the proposed reduction, termination, or suspension, the area program is not required to continue authorization for the current service.~~
 - ~~(F) If an enrollee appeals the DMH/DD/SAS hearing officer's decision to OAH, the area program is required to continue or reinstate authorization for the current service until a final decision is issued by the Department.~~

- (G) ~~If an enrollee appeals an area program adverse decision after the effective date of the proposed reduction, termination, or suspension, the area program is not required to continue authorization for the current service.~~
- (9) ~~Recovery Procedures: If an enrollee abandons an appeal, or if after an appeal through OAH, the DMH/DD/SAS Final Agency Decision upholds the area program's adverse decision, the State may commence to recover the financial costs of any unauthorized services furnished to the enrollee as the result of taking the appeal. Financial costs accumulate from the area program's proposed date of service reduction, termination or suspension.~~
- (10) ~~Expedited Appeals:~~
 - (A) ~~Emergency appeals may be initiated by oral or written communication to the area program or to the DMH/DD/SAS. To start an emergency appeal the enrollee or his legally responsible person must attest that services are urgently needed and the failure to provide them promptly or to continue them might reasonably cause deterioration, or impair improvement, in the enrollee's medical condition.~~
 - (B) ~~The area program shall conduct an expedited review within 24 hours of receipt of the request, and if its review upholds the adverse decision, the area program shall directly forward its decision and a copy of all relevant medical records to the DMH/DD/SAS.~~
 - (C) ~~The DMH/DD/SAS shall issue its decision within two working days of the enrollee's request for expedited review.~~
 - (D) ~~The area program is required to continue authorization for the current service through an expedited appeal until the appeal is abandoned or the Department issues a final decision.~~

History Note: Authority G.S. 122C 112; 122C 143.1; 122C 143.2; 122C 147; 122C 147.1; 122C 147.2; 42 C.F.R. 431; Social Security Act, Waiver under Sections 1915(b(1)) and (b)(4); Eff. February 1, 1996; Amended Eff. April 1, 1999.

~~SECTION .0200 - SINGLE PORTAL OF ENTRY AND EXIT DESIGNATION~~

~~10A NCAC 29D .0201 SCOPE~~

- (a) ~~The rules in this Section apply to single portal of entry and exit policy for public and private services for individuals with developmental disabilities as set forth in G.S. 122C 132.1.~~
- (b) ~~Day/night and 24 hour services for individuals with developmental disabilities, provided under the following authorities shall be subject to the rules of this Section:~~
 - (1) ~~G.S. 122C and 131D 2;~~
 - (2) ~~G.S. 131E, Part A of Article 6;~~
 - (3) ~~G.S. 110, Article 7;~~
 - (4) ~~Rules of the Division of Vocational Rehabilitation Services, when funded jointly by the area authority and the Division of Vocational Rehabilitation;~~
 - (5) ~~Rules of the Department of Public Instruction, when funded jointly by the area authority and the Department of Public Instruction; and~~
 - (6) ~~Rules of the Social Social Services Commission set forth in:~~
 - (A) ~~10A NCAC 70B Foster Care Services for Children;~~
 - (B) ~~10A NCAC 71C Foster Care Services for Adults (covers domiciliary home placement);~~
 - (C) ~~10A NCAC 71J Health Support Services (covers nursing home placement);~~
 - (D) ~~10A NCAC 06P Day Care Services for Adults; and~~
 - (E) ~~10A NCAC 71K Problem Pregnancy Services (covers maternity home placement).~~

- (c) ~~The criteria and procedures shall be based on a person-centered services model, and be followed by:~~
- ~~(1) — staff of the local area mental health authority; and~~
 - ~~(2) — public and private providers of day/night and 24 hour services for persons with mental retardation and developmental disabilities.~~

~~History Note: Authority G.S. 143B-147;
Eff. July 1, 1994.~~

10A NCAC 29D .0202 EXPLANATION OF TERMS

~~For the purposes of the rules in this Section, the following terms shall have the meanings indicated:~~

- ~~(1) — "Advocacy groups" means groups, organizations, or associations which have as a primary purpose the support, protection and advancement of the interests of a particular population. In this instance, the population is comprised of persons with disabilities.~~
- ~~(2) — "Client" means the term as defined in G.S. 122C-3.~~
- ~~(3) — "Community Interagency Council" means a group of human service professionals from various agencies and organizations; a consumer of a developmental disability service; and a family member of a consumer of a developmental disability service, who:~~
 - ~~(a) — function under the guidance of the area mental health, developmental disabilities and substance abuse authority;~~
 - ~~(b) — assist in planning for the needs of individuals with developmental disabilities; and~~
 - ~~(c) — provide general information and education to the community in:~~
 - ~~(i) — screening individuals for services;~~
 - ~~(ii) — identifying client needs;~~
 - ~~(iii) — identifying available resources and alternatives; and~~
 - ~~(iv) — determining a client's appropriateness for services within various agencies in the community.~~
- ~~(4) — "Day/night and 24 hour service" mean the terms as defined in 10 NCAC 14K .0103(e) and contained in Division publication, Licensure Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 40-2, and available, upon request, from the Division at the current printing cost.~~
- ~~(5) — "Developmental disabilities" means the term as defined in G.S. 122C-3.~~
- ~~(6) — "Emergency entry and exit" means screening and evaluation for placement which is provided on an immediate non-scheduled basis to individuals with developmental disabilities.~~
- ~~(7) — "Funded jointly" means funding from two or more sources or agencies.~~
- ~~(8) — "Notification procedures for provision of services" means notification from one area program to another that it plans to operate or contract for services in that area program's catchment area, as specified in 10A NCAC 29D .0801.~~
- ~~(9) — "Person-centered services model" means an approach to planning services for a client with developmental disabilities based on the client's needs, in order to help a client make choices and decisions, and respect those decisions.~~
- ~~(10) — "Review" means an organized protocol to assess the needs of individuals for day/night and 24-hour services to ensure appropriate referrals.~~
- ~~(11) — "Single portal of entry and exit policy" means the term as defined in G.S. 122C-3.~~
- ~~(12) — "Waiting list" means a listing of persons who are in need of day/night and 24-hour services.~~

~~The material referenced in this Rule includes subsequent amendments or editions to the referenced material.~~

~~History Note: Authority G.S. 143B-147;
Eff. July 1, 1994.~~

~~10A NCAC 29D .0203 — DESIGNATION PROCEDURES~~

~~(a) Each area authority shall develop a single portal of entry and exit plan that shall include, but not be limited to:~~

- ~~(1) a specific listing of day/night and residential services to be covered by the plan;~~
- ~~(2) procedures for:~~
 - ~~(A) review of individuals to be admitted to or discharged from services;~~
 - ~~(B) emergency entry and exit from services, which shall include, but not be limited to:~~
 - ~~(i) notification to the area program within 24 hours of the entry or exit; and~~
 - ~~(ii) exit review, as required by single portal mechanism.~~
 - ~~(C) shared responsibility when individuals are admitted directly to a State facility;~~
 - ~~(D) facility and citizen complaints;~~
 - ~~(E) specific grievance process, as specified in:~~
 - ~~(i) 10 NCAC 14Q .0200, contained in Division publication, Client Rights in Community Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 95 2; and~~
 - ~~(ii) G.S. 122C 151.4, Appeals to Area Authority Appeals Panel.~~
 - ~~(F) residential facilities located in an area mental health program serving statewide and regional clients; and~~
 - ~~(G) placement of clients outside their county of residence;~~
- ~~(3) provisions for:~~
 - ~~(A) services funded jointly by area authorities and local education agencies;~~
 - ~~(B) services funded jointly by area authorities and the Division of Vocational Rehabilitation;~~
 - ~~(C) decision making within the community interagency mechanism with details regarding the authority of the area program for input and final decision on the plan;~~
 - ~~(D) composition of the membership of the Community Interagency Council, which shall include but not be limited to:~~
 - ~~(i) a consumer of a developmental disability service;~~
 - ~~(ii) a family member of a consumer of a developmental disability service; and~~
 - ~~(iii) a representative from the following:~~
 - ~~(I) Department of Social Services;~~
 - ~~(II) Regional Mental Retardation Center;~~
 - ~~(III) Public Schools;~~
 - ~~(IV) Division of Vocational Rehabilitation;~~
 - ~~(V) Public Health Department;~~
 - ~~(VI) Area mh/dd/sa programs;~~
 - ~~(VII) Advocacy groups; and~~
 - ~~(VIII) Residential and Day Service providers.~~
 - ~~(E) person-centered services as defined in Rule .0202 of this Section;~~
- ~~(4) a process for maintaining a waiting list which shall contain, but not be limited to, the following documentation for each potential client:~~
 - ~~(A) name and identifying information;~~
 - ~~(B) referral date;~~
 - ~~(C) eligibility status;~~
 - ~~(D) identified disability;~~
 - ~~(E) requested type of service which shall include, but not be limited to:~~
 - ~~(i) name and location of service referred to;~~
 - ~~(ii) date of need for service;~~

- (iii) ~~service availability; and~~
 - (F) ~~status of referral which includes the following:~~
 - (i) ~~slot availability;~~
 - (ii) ~~acceptance of referral;~~
 - (iii) ~~date of enrollment;~~
 - (iv) ~~rejection of referral.~~
- (b) ~~The area authority shall ensure:~~
 - (1) ~~adherence to notification procedures as set forth in 10 NCAC 18A .0605 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES;~~
 - (2) ~~compliance with P.L. 99-457 regarding 45-day waiting list;~~
 - (3) ~~that annual summary reports for waiting lists are submitted to the Division by January 30 of each year which shall include, but need not be limited to:~~
 - (A) ~~the information as specified in Subparagraph (a)(4) of this Rule;~~
 - (B) ~~types of services (all clients referred to each service including date, status, and number of days waiting by service type code);~~
 - (C) ~~providers of services (providers in provider code order);~~
 - (D) ~~provider statistics on referrals (providers with number of referrals and length of waiting period);~~
 - (E) ~~service type statistics (service types with number of referrals and length of waiting period); and~~
 - (F) ~~frequency report (providers, service types and age groups with the number of referrals for each and the percent of the total it represents).~~
 - (4) ~~review of the plan by the Community Interagency Council for approval by the Area Board. Written comments of the Interagency Council shall accompany the area plan for consideration by the area board and the Division.~~
 - (5) ~~that the plan is forwarded to the Division to be reviewed by the Secretary for approval;~~
 - (6) ~~that any changes in the plan are reviewed and approved by the Secretary, once the area is designated as single portal; and~~
 - (7) ~~that the approved plan is made available to local service providers, agencies and consumers.~~

History Note: ~~Authority G.S. 143B-147;~~
~~Eff. July 1, 1994.~~

~~SECTION .0300 -- DESIGNATION OF AREA MENTAL HEALTH: MENTAL RETARDATION AND SUBSTANCE ABUSE AUTHORITIES AND CATCHMENT AREAS~~

~~10A NCAC 29D .0301 SCOPE~~

(a) ~~The purpose of the rules in this Subchapter is to designate area authorities and catchment areas for the delivery of community-based mental health, mental retardation and substance abuse services and to specify the process to be followed in requesting changes in catchment areas.~~

(b) ~~These Rules apply to the 41 area mental health, mental retardation and substance abuse authorities.~~

History Note: ~~Authority G.S. 122C-3; 122C-112; 122C-115; 122C-116; 122C-117;
122C-118; 122C-132; 143B-147;~~
~~Eff. October 1, 1983;~~
~~Amended Eff. July 1, 1984.~~

~~10A NCAC 29D .0302 DEFINITIONS~~

As used in this Subchapter, the following terms have the meanings specified:

- (1) ~~"Area Authority" means an area mental health, mental retardation, and substance abuse authority which is the governing unit authorized by the Commission and delegated the authority to serve as the comprehensive planning, budgeting, implementing, and~~

~~monitoring group for community-based mental health, mental retardation, and substance abuse programs. An area authority is a local political subdivision of the state except that a single county area mental health, mental retardation, and substance abuse authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.~~

- ~~(2) "Catchment Area" means a geographic portion of the state served by a specific area authority.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 143B-147;
Eff. October 1, 1983.~~

~~10A NCAC 29D .0303 AREA AUTHORITIES AND CATCHMENT AREAS~~

~~The designated area authorities and the counties which comprise the catchment area for each authority shall be as follows:~~

- ~~(1) The Western Region consists of:~~

- ~~(a) Smoky Mountain Area Authority serving a catchment area of Cherokee, Clay, Graham, Jackson, Haywood, Macon, and Swain Counties;~~
- ~~(b) Blue Ridge Area Authority serving a catchment area of Buncombe, Madison, Mitchell, and Yancey Counties;~~
- ~~(c) New River Authority serving a catchment area of Alleghany, Ashe, Avery, Watauga, and Wilkes Counties;~~
- ~~(d) Trend Area Authority serving a catchment area of Transylvania and Henderson Counties;~~
- ~~(e) Foothills Area Authority serving a catchment area of Caldwell, Burke, Alexander, and McDowell Counties;~~
- ~~(f) Rutherford Polk Area Authority serving a catchment area of Rutherford and Polk Counties;~~
- ~~(g) Cleveland Area Authority serving a catchment area of Cleveland County;~~
- ~~(h) Gaston Lincoln Area Authority serving a catchment area of Gaston and Lincoln Counties;~~
- ~~(i) Catawba Area Authority serving a catchment area of Catawba County;~~
- ~~(j) Mecklenburg Area Authority serving a catchment area of Mecklenburg County;~~
- ~~(k) Tri County Area Authority serving a catchment area of Rowan, Iredell, and Davie Counties; and~~
- ~~(l) Piedmont Area Authority serving a catchment area of Stanly, Cabarrus, and Union Counties.~~

- ~~(2) The North Central Region consists of:~~

- ~~(a) Surry Yadkin Area Authority serving a catchment area of Surry and Yadkin Counties;~~
- ~~(b) Forsyth Stokes Area Authority serving a catchment area of Forsyth and Stokes Counties;~~
- ~~(c) Rockingham Area Authority serving a catchment area of Rockingham County;~~
- ~~(d) Alamance Caswell Area Authority serving a catchment area of Alamance and Caswell Counties;~~
- ~~(e) Guilford Area Authority serving a catchment area of Guilford County;~~
- ~~(f) Orange, Person, Chatham Area Authority serving a catchment area of Orange, Person and Chatham Counties;~~
- ~~(g) Durham Area Authority serving a catchment area of Durham County; and~~
- ~~(h) Vance, Granville, Franklin, Warren Area Authority serving a catchment area of Vance, Granville, Franklin, and Warren Counties.~~

- ~~(3) The South Central Region consists of:~~

- ~~(a) Davidson Area Authority serving a catchment area of Davidson County;~~

- ~~(b) Sandhills Area Authority serving a catchment area of Moore, Hoke, Richmond, Montgomery, and Anson Counties;~~
- ~~(c) Southeastern Regional Area Authority serving a catchment area of Robeson, Bladen, Scotland, and Columbus Counties;~~
- ~~(d) Cumberland Area Authority serving a catchment area of Cumberland County;~~
- ~~(e) Lee Harnett Area Authority serving a catchment area of Lee and Harnett Counties;~~
- ~~(f) Johnston Area Authority serving a catchment area of Johnston County;~~
- ~~(g) Wake Area Authority serving a catchment area of Wake County; and~~
- ~~(h) Randolph Area Authority serving a catchment area of Randolph County.~~
- ~~(4) The Eastern Region consists of:~~
 - ~~(a) Southeastern Area Authority serving a catchment area of New Hanover, Brunswick, and Pender Counties;~~
 - ~~(b) Onslow Area Authority serving a catchment area of Onslow County;~~
 - ~~(c) Wayne Area Authority serving a catchment area of Wayne County;~~
 - ~~(d) Wilson Greene Area Authority serving a catchment area of Wilson and Greene Counties;~~
 - ~~(e) Edgecombe Nash Area Authority serving a catchment area of Edgecombe and Nash Counties;~~
 - ~~(f) Halifax Area Authority serving a catchment area of Halifax County;~~
 - ~~(g) Neuse Area Authority serving a catchment area of Craven, Jones, Pamlico, and Carteret Counties;~~
 - ~~(h) Lenoir Area Authority serving a catchment area of Lenoir County;~~
 - ~~(i) Pitt Area Authority serving a catchment area of Pitt County;~~
 - ~~(j) Roanoke Chowan Area Authority serving a catchment area of Hertford, Bertie, Gates, and Northampton Counties;~~
 - ~~(k) Tideland Area Authority serving a catchment area of Beaufort, Washington, Tyrrell, Hyde, and Martin Counties;~~
 - ~~(l) Albemarle Area Authority serving a catchment area of Pasquotank, Chowan, Perquimans, Camden, Dare, and Currituck Counties; and~~
 - ~~(m) Duplin Sampson Area Authority serving a catchment area of Duplin and Sampson Counties.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 143B-147;~~

~~Eff. October 1, 1983.~~

~~10A NCAC 29D .0304 — CHANGE OF CATCHMENT AREAS~~

- ~~(a) Any catchment area designated after July 1, 1984 shall have a population of at least 75,000 and no more than 200,000.~~
- ~~(b) Any request for designation as a catchment area shall be submitted in a written petition to: Chairman, Commission for Mental Health, Mental Retardation and Substance Abuse Services, c/o Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N. C. 27611. The petition shall meet the following requirements:~~
 - ~~(1) The petition shall be submitted by the board or boards of county commissioners of the proposed catchment area.~~
 - ~~(2) The petition shall contain the written concurrence of the present area authority and that of the Board of commissioners of each county of the present catchment area.~~
 - ~~(3) The petition shall contain documentation that the proposed catchment area has the capacity to provide comprehensive mental health, mental retardation and substance abuse services as required by the rules of the Commission and the Department.~~
 - ~~(4) The petition shall contain documentation that comprehensive services can be provided in the proposed catchment area at no additional cost to the state.~~

~~History Note: Authority G.S. 122C-3; 122C-112; 143B-147;~~

~~Eff. July 1, 1984.~~

Table 1

NC Methamphetamine Lab Prevention Act	Federal Combat Methamphetamine Epidemic Act
<u>Products Regulated</u> Pseudoephedrine products in tablet or caplet form- does not apply to liquid, liquid capsule, gel capsule or pediatric products	<u>Products Regulated</u> Any pseudoephedrine product
<u>Storage</u> Pseudoephedrine product in the form of tablet or caplet shall be stored and sold behind a pharmacy counter	<u>Storage</u> (September 30, 2006) Behind-the-Counter placement so that customers do not have direct access to the product, includes storing product in a locked cabinet that is located in an area to which customers have direct access.
<u>Transaction limits</u> <ul style="list-style-type: none"> • A single sale of not more than 2 pkg containing a combined total of more than 6 grams • May not exceed 3 pkg with a combined total of more than 9 grams within a 30-day period. • Limits do not apply if the product is dispensed under a valid prescription. 	<u>Transaction limits</u> (April 8, 2006) <ul style="list-style-type: none"> • May not exceed a daily amount of 3.6 grams, without regard to the number of transactions • May not exceed 9 grams in a 30-day period.
<u>Log Requirements</u> Name, address, and signature of purchaser, each product purchased, number of grams and purchase date shall be entered in a record of disposition on a form approved by the Commission. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. A statement in at least 10-point boldface type at the top of every page of record of disposition substantially similar to: "NC LAW STRICTLY PROHIBITS A SINGLE TRANSACTION PURCHASE OF...BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED...MAY SUBJECT ME TO CRIMINAL PENALTIES."	<u>Log Requirements</u> (September 30, 2006) Seller maintains a written or electronic list of sales that identifies the products by name, quantity sold, names addresses and signatures of purchasers, and dates and times of sales – does not apply to a purchase of a single sales package that contains not more than 60 milligrams.
<u>Training</u> Requires employees involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine products for which the Commission issues an order be trained in a program conducted by or approved by the Commission	<u>Training</u> (September 30, 2006) Self-certification to US AG, including a statement that the seller understands each requirement. AG shall establish criteria for certification and training and a program regarding certification and training through a DOJ Internet site and other means determined appropriate.